



ANALYTICAL SURVEY OF BENGAL REGULATIONS

(AND ACTS OF PARLIAMENT RELATING TO INDIA, UP TO 1833)

WITH A FOREWORD BY
HON'BLE MR. JUSTICE C. C. BISWAS, C.I.E.

BY
RAI M. N. GUPTA BAHADUR, M.A., B.L.
FORMERLY OF THE BENGAL CIVIL SERVICE; AUTHOR OF 'LAND SYSTEM OF BENGAL,'
'LAND ACQUISITION ACTS AND PRINCIPLES OF VALUATION,' 'NOTES ON THE
AMENDMENTS OF THE BENGAL TENANCY ACT,' ETC.



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CONTENTS

	PAGES
FOREWORD	v-x
PREFACE	xi-xii
CHAPTER I	
Introduction	1-53
CHAPTER II	
Administration of Criminal Justice ..	54-96
Chronological Synopsis of Regulations relating to Criminal Justice	96-133
CHAPTER III	
Police Administration	134-147
Chronological Synopsis of Regulations relating to Police	147-157
CHAPTER IV	
Administration of Civil Justice	158-218
Chronological Synopsis of Regulations relating to Civil Justice	218-274
CHAPTER V	
Land Revenue	275-301
CHAPTER VI	
Customs and Inland Duties	302-321
Chronological Synopsis of Regulations relating to Customs and Inland Duties	321-352
CHAPTER VII	
Salt	353-360
Chronological Synopsis of Regulations relating to Salt	360-368
CHAPTER VIII	
Opium	369-379
Chronological Synopsis of Regulations relating to Opium	379-385



	PAGES
CHAPTER IX	
<i>Abkari</i>	386-396
Chronological Synopsis of Regulations relating to <i>Abkari</i>	396-403
CHAPTER X	
Stamp-Duties	404-411
Chronological Synopsis of Regulations relating to Stamps	411-418
CHAPTER XI	
Coins and Mint	419-434
Chronological Synopsis of Regulations relating to Coins and Mint	435-443
CHAPTER XII	
Miscellaneous—Registration, Court of Wards, Land Acquisition, Emigrants, Jails, Hidden Treasure, Printing Presses, Commercial Resi- dents and Agents, Indigo, Invalided Native Soldiers, Troops and Armed Guards, Prince of Wales Island, Singapore and Malacca, Covenanted Civil Servants, Codification of Regulations	444-454
Synopsis of Miscellaneous Regulations	454-467
CHAPTER XIII	
Charters and Acts of Parliament	468-488
Chronological Synopsis of the Acts of Parliament relating to the Company's Affairs up to 1833	488-525
GENERAL INDEX	527-534
ERRATA	535

FOREWORD

For about 70 years since the acquisition of the Dewany of Bengal, Bihar and Orissa in 1765, the East India Company administered these territories by laws and orders called Regulations, and over a hundred years have elapsed since the last of these Regulations was promulgated in February, 1834. Most of these Regulations are now obsolete, and are looked upon more or less as curios of little practical value, and yet it can hardly be denied that they furnish most useful and instructive data not only for a study of the administrative history of the period which they cover, but also for understanding the evolution of the laws and institutions which are in force at this day. It is somewhat surprising, therefore, that so far as I know, no attempt has hitherto been made by any one to present these materials before the public in a collected form, not to speak of an analytical study of the same from a historical point of view. Field in his well-known "Introduction" written in 1875 gives a catalogue of the Regulations which were passed during the years 1793 to 1834, but valuable as this catalogue is, it gives no more than the titles of these Regulations and references to their amendments and repeals. Harington wrote his Analysis of the earlier Regulations, and Colebrooke, Auber and other scholars also made their contributions in their own way. But the credit of dealing with the entire body of Regulations on a systematised plan, so as to present a complete picture of the whole field of administration during the early stages of the growth of British power in this country, must belong to the writer of the present volume, whose other book on the "Land System of Bengal" has already marked him out as an authority

on this branch of study, endowed with the true perspective of a historian.

The distinctive feature of the present work is its method of treatment, which cannot but be of the utmost help to the student who seeks to thread his way through the winding maze of the Regulations, over 650 in number, and covering as they do a wide range of subjects. These have in fact been all classified and arranged according to the subjects with which they deal, and under each subject, there is first a critical and historical summary of the Regulations bearing on it, and then a chronological synopsis of the main provisions thereof. Preceding the whole of this analytical survey is an illuminating introduction, in which the author gives a general review of the main features of administration during the period of the Regulations, tracing at the same time the successive stages in the evolution of British rule. To complete the picture, the author has included in the concluding chapter a synopsis, with a critical summary, of the Acts of Parliament, 88 in number, relating to the Company's affairs in India, which were enacted up to the year 1833, and has also added an interesting account of the growth and development of the Company itself from the time of Queen Elizabeth.

The period with which this treatise deals forms indeed a unique chapter in the history of our country, perhaps without a parallel in the history of any other country in the world. The government during this period was not the government of the Crown of England, or even on its behalf, nor the government of the Emperor from whom the Dewany was obtained and who still sat on the throne at Delhi, nor a government of the people themselves; but it was the government of a body of traders—the United Company of British Merchants then trading in the East Indies—who, having first obtained control

over the revenues of these territories, very soon found themselves called upon to assume the full functions of government. The links which tied them to the Emperor by the terms of the Dewany *farman* were broken, but yet there was no assertion of sovereign right by their own King or Parliament. The first "challenge" from that quarter was a demand for an annual contribution from the Company to the British Exchequer as the "price" (as the author calls it) for the permission of Parliament for their continuing in the occupation of these territories. Parliament concerned itself mainly with the European British subjects, established a King's Court (the Supreme Court of Judicature at Calcutta) for them, and made provisions for the security of the pay, prospects and pensions of such of them as were employed by the Company. But about the vast native population, the Acts passed during this period—and they were numerous—were scrupulously silent. They were not yet "His Majesty's subjects," but only "native inhabitants of the country"; and the Courts and the Governmental organisations for them were the Company's Courts and organisations, established under Regulations passed by their Governor-General and Council.

The Charter Act of 1833 declared that thenceforward the Company were to hold the territories in India as "in trust for the Crown of Great Britain and Ireland." But till then the exact constitutional status of the Company was not very clear; for, being subjects themselves, they could not, as observed by the author, exercise any sovereign right, except on behalf of their own King and Parliament. But passing over this abstract question of constitutional law, the actual position which had developed was, as H. G. Wells puts it in his "Outline of History," that "a trading Company, with its tradition of gain, found itself dealing not merely in spices and dyes and

tea and jewels, but in revenues and territories of princes and the destinies of India." It could not be expected that such a body would at once shake off their "tradition," and act forthwith with full consciousness of their new responsibilities. During the first seven years after the Dewany, they appropriated the revenues, but undertook no responsibilities regarding the civil administration. There were thus huge surpluses and profits, and they were elated. But the result in the country was anarchy, followed by the Great Famine of 1769-70 and a pestilence which wrought terrible havoc amongst the very people from whom they drew and expected to draw their revenues. The first attempt for an ordered Government was by Warren Hastings, but the reeling vessel was not steadied till the inauguration of the judicial and administrative arrangements of Lord Cornwallis. His measures were thorough, and the ideal set forth by him should be a beacon light for all times. But while many of the Regulations passed by Lord Cornwallis and passed later sought to maintain this ideal, there were others which showed serious lapses and inconsistencies. This was inevitable so long as a trading company, primarily interested in their own profits, were permitted to wield the functions of Government as well, with nothing to challenge their acts, while Parliament also imposed heavy financial demands upon them.

It is in this light that the author appraises the lapses and incongruities in the Regulations; but the worst according to the author was the manner in which the Company diverted the revenues realised by them in Bengal to meet the deficits in Madras and Bombay, and to defray the costs of the wars in which the Company got involved in other parts of India, besides meeting the demands upon them in England; while essential services in the Province itself, as for education, public health and the

like, were neglected. A change in the outlook commenced only when the Company were divested of their commercial occupations by the Charter Act of 1833, and more fully when the Crown assumed the Government of India in 1858; and the author regrets that this last measure had not been taken much earlier. Had this been done even in 1833, there would have been, the author observes, an advance in the methods of the Government by at least twenty-five years, and perhaps the Mutiny with its horrid massacres would have been avoided.

Whilst there was this dark side of the Company's administration, the manner in which they maintained law and order, provided for administration of justice and stopped with a strong hand many social evils, such as infant sacrifice, *Sati* and *Dharna*, was highly commendable. The combination of judicial and revenue functions was stopped at an early period, when the Civil Judge was made independent of the Collector of revenue, and acts done by the latter and other executive officers in contravention of the Regulations were made liable to be questioned in the Civil Court. Similarly, the Provincial Councils were replaced by Provincial Courts of Appeal. By the year 1814, the Governor-General and the members of his Council ceased to be Judges of the *Sadr Dewany Adalat* and the *Nizamat Adalat*. In the administration of criminal justice the Muhammadan Law was at first adhered to, and the *Kazis* and *Muftis* were consulted, and their opinions respected. Changes to conform to more modern notions were introduced cautiously, and eventually scales of punishment for different kinds of offences were laid down. The punishment of mutilation of limbs, which seems to have persisted in Bengal, was stopped at an early period. The practice of inflicting indelible marks on the forehead of persons convicted of felony, perjury or forgery, though tolerated for some

time, was eventually stopped ; while the revolting practice of publicly flogging at the cart's tail, still then followed by the Courts in the city of Calcutta, was not imitated. In the administration of civil justice, the personal laws of the parties, Hindu or Muslim, were respected from the beginning, in all matters relating to succession, inheritance, marriage, caste and the like, and the opinions of *Pandits* and native Law Officers were respected. The broad principles of " equity, justice and good conscience " came to be applied later as the governing rule where such laws were silent or not very clear. Rules of limitation for suits and acquisition of right by usucaption were laid down. Rates of interest on loans were restricted to 12 per cent. per annum, and usufructuary mortgages were declared as automatically redeemed when the principal sum with simple interest at the above rate was recovered from the usufruct of the mortgaged property. There was no codified Law of Evidence, but the English principles, which were followed in the Supreme Court at Calcutta, gradually gained preference and were established in the Company's Courts in the interior. An interesting story is the development of the Bar during this period : queer as were the rules at first regarding Pleaders and Vakeels, the lawyers came in course of time to be placed on a footing of independence.

All these, and various other matters affecting the economic and administrative history of the country, have been fully discussed in these pages, with reference to the Regulations, and I am sure, the book will meet with a warm welcome from student, lawyer and general reader alike. The Calcutta University deserves to be congratulated for bringing out such a helpful treatise.

HIGH COURT, CALCUTTA : .

C. C. BISWAS

December 14, 1942.

PREFACE

No less than 675 Regulations, many of them containing over one hundred sections, were passed by the United East India Company's Government in Bengal during the period 1793 to 1834. A good number of uncodified Regulations also were promulgated prior to this period. These Regulations furnish the best material for studying the methods of administration, or rather experiments in government, during the first seventy years of British rule from 1765 to 1834. Unfortunately, it is not easy to get a complete set of these Regulations, as they underwent considerable changes during this period, and subsequently, all the rest, excepting about forty-five, were entirely repealed or replaced by later enactments.

For the analytical survey in this book, these Regulations have been first classified by subjects as Criminal Justice, Police, Civil Justice, Land Revenue, Customs, Excise, Salt, Opium, Coins and so forth. A chronological synopsis of the Regulations relating to a particular subject is appended to the Chapter on that subject : and a critical summary of the main provisions, together with a brief account of the conditions during the pre-British period, is given in the main part of each Chapter. A similar chronological synopsis, with a similar summary, of the Acts of Parliament relating to India, up to 1833, is given in the last Chapter. The Introductory Chapter gives a historical account of the growth of British power in the Lower Provinces, and a general review of the main features of the administration during the period.

A fuller account of land revenue and land tenures is contained in my other book—"Land System of Bengal,"



published by the Calcutta University in 1940 ; and as a chronological synopsis of the Regulations bearing on this subject has been given in an Appendix to that book, it is not repeated in the present work.

I take this opportunity to acknowledge, with thanks, the assistance rendered throughout by the staff of the Calcutta University Press, particularly in the reading of the proofs.

CALCUTTA :
October, 1942.

M. N. GUPTA

CHAPTER I

INTRODUCTION

To follow the development of legislation by Regulations and Orders, during the earlier period of the Company's administration, it is necessary to call to mind the main historical events which mark the growth of the British power in the Lower Provinces of Bengal and Behar, and eventual assumption of the functions of Government.¹ These events were :—

(1) Purchase of the zemindari rights in the three villages, Kalikata (Calcutta), Sutanati and Govindapur, in 1698, subject to the payment of an annual revenue of Rs. 1,195/- to the Mughal Government : establishment of Fort William.²

(2) Privilege of free trade obtained from Emperor Furrok Sher in 1717 : and permission to purchase 38 villages adjacent to Calcutta, from the zemindars.

(3) Construction of the Maharatta Ditch in 1741, for the protection of the Company's settlement at Fort William.

(4) The Battle of Plassey in 1757, and Clive's re-entry into Calcutta.

¹ It was not by the happening of a single event as the Battle of Plassey or the Battle of Buxar, that Sovereign-powers passed into the hands of the English Company. The powers accumulated gradually and grew—"as the fungus sprouts chaotic from its bed * * * chance directed, chance erected, laid and built on the silt" (Rudyard Kipling).

² The construction of the Fort was not, however, completed till 1773. It is situated in that part of the original zemindari which was called Govindapur : the fort being known then to local people as Garh Govindapur.

(5) Mir Cossim's grant of the lands of Burdwan, Midnapore and Chittagong in 1760,—“for all charges of the Company and of the said (their) army and provisions for the field, etc.”

(6) The Battle of Buxar in 1764, followed by the grant of the Dewany of Bengal, Behar and Orissa by Emperor Shah Alam in 1765, subject to an annual payment of Rs. 26 lakhs to the Emperor.

(7) British Parliament's Act of 1767, asserting certain control over the dividends of the Company, and subjecting them to an annual payment of £400,000 to the British Exchequer.

(8) Stoppage of the annual tribute of Rs. 26 lakhs to the Emperor, by Warren Hastings in 1772 : simultaneous assumption of administration of civil justice, and certain amount of control over criminal justice.

(9) The Regulating Act of 1773 (13 Geo. III C. 63)—the first Indian constitution by the British Parliament : establishment of the Supreme Court of Judicature at Fort William : authorisation to the Governor-General in Council to make laws and regulations in certain respects,—amplified later in 1781 by 21 Geo. III. C. 70.

(10) Assumption of complete authority over criminal justice, by Lord Cornwallis in 1790, independently of the Nawab.

(11) Further clarification of the authority of legislation by 37 Geo. III. C. 142, in 1797.

2. The position of the Company when they purchased the three villages of Kalikata, Sutanati and Govindapur, was that they were only zemindars like other zemindars under the Mughal Government, and were entitled to appropriate the rents and profits from the land, subject to payment of an annual *jumma* of Rs. 1,195. It did not carry with it any of the functions of Government, except

Constitutional position of the occupations in Calcutta.



perhaps what were then usually exercised by other zemindars in the *Subah*. The zemindars were, according to the "constitution" of those days, responsible for the maintenance of the Police³ in their respective estates, and, besides the power of settling tenants on the land and collecting rents from them, had also the authority to collect miscellaneous levies called "Sayer," which were then accounted for through their revenue-accounts. This power did not

Charter of 1726 :
authority for legisla-
tion : Mayor's
Court.

extend to administration of justice, civil or criminal, by any tribunal of theirs, or to promulgating laws. The Company, however, obtained a Charter from King George I in 1726,⁴ for the establishment of a Mayor's court at Fort William to be managed in the same manner as similar courts established in the Island of Bombay⁵ and at Fort St. George in Madras. The Charter also authorised the President of the Settlement and the members of his Council, to act as Justices of the Peace and Commissioners of Oyer and Terminer and gaol delivery : to

³ The *thanadars* (officers at Police stations) were remunerated with lands from the zemindar's estates : and so also some of the subordinate staff. Others were paid monthly wages by the zemindar, while the host of zemindar's *pykies* performed the double duty of Police and assistance in the collection of rent and transport of the money.

⁴ During the Subahdarship of Murshed Kuli Khan, the Company's occupations in Bengal were far from peaceful : and he did not permit the purchase of 38 villages for which the Emperor had given his sanction. After Murshed Kuli Khan's death (1725), all obstructions ceased and the Company were left to administer their own affairs themselves, and carry on their trade without let or hindrance. The rapid decline of the Mughal Empire from this time and the inability of the Subahdar to protect his subjects against the raids from the Maharattas, strengthened the position of the Company. In 1741 the Company were permitted to dig a ditch (the Maharatta Ditch) around their settlement and to maintain an army for their own independent protection.

⁵ The position with regard to the Island of Bombay was different. This island was "ceded in full sovereignty" to Charles II in 1661 by the King of Portugal as part of the marriage dowry of the Infanta. Charles II then granted it to the East India Company, which at the same time gained possession of some factories on the West Coast of India.

hold quarter sessions and to proceed to hear, try and punish, all criminal cases, except only of high treason, as Commissioners of Oyer and Terminer did in England, appointing Grand and Petty Jurys for these purposes. The same Charter also gave the Company, powers "to make, consolidate and ordain Bye-laws, Rules and Ordinances for the good Government of the several corporations hereby created, and of the *inhabitants of the several towns, places and factories* aforesaid respectively, and to impose reasonable pains and penalties upon all persons offending against the same or any." It was enjoined that such Bye-laws

and penalties were to be reasonable and
Charter of 1753. *not contrary to the Laws and Statutes of*

England. The same powers and injunctions were repeated in the Charter granted by George II in 1753.

3. There is no record of what Bye-laws, Rules or Ordinances were passed under the authority of these Charters; but the tribunals, as contemplated in them, were established, and

Discourses on the constitutional propriety of the Mayor's Court.

functioned fully. In the three villages

occupied by the Company, where they were only zemindars under the Mughal Government, the operation of such courts, administering a different law with a different course of appeal,⁶ was thus *prima facie* anomalous: and it has puzzled jurists how it was constitutionally justified. Cowell⁷ in his "History and Constitution, etc.," observes that the general character of the position could be explained as one "obtained by the leave of the Native Government," express or implied. In Bengal, the Company—though only zemindars—were permitted to fortify their factory at Fort William: and the *Subahdar*, himself

⁶ Appeal from the judgment of the Mayor's Court lay to the President and Council: and then in case of value of and above 1,000 *pagodas* (about 3,500 rupees) to the King in Council (the Privy Council).

⁷ *Tagore Law Lectures*, 1872, pp. 11, etc.

unable to protect them against the raids of the Maharattas, had to let them arrange for their own protection by making a ditch around their settlement, and maintain an armed force. In these circumstances it was idle to expect that the *Subahdar* could think of any effective interference in the internal management within the fortifications thus established. The Mughal power was at this time rapidly in the wane, and the Emperor's authority, particularly in the distant *Subahs*, was very feeble. In Bengal the constituted organizations for the administration of justice, were falling into disorder, and many zemindars and other persons of local influence arrogated these functions. Mr. Justice Field observes that the function of the constitutional Mughal tribunals gradually got almost restricted to the Capital of Murshidabad and its environments. Referring to the administration of criminal justice at about the time the Company acquired the Dewany, the Parliamentary Committee of Secrecy reporting in 1773, wrote :—" The Criminal Court in every district was generally known as the *Faujdary* : the zemindar or the *raja* of the district was the judge in this court : his jurisdiction extended to all cases, but * * * in such as were of a capital nature, the sentence was not executed until a report was made to the Government at Murshidabad."

But apart from these it does not seem that the Muhammadan Rulers ever troubled themselves with international laws relating to juridical status of foreigners within their territories. If such foreigners preferred to have their own laws and procedure for the settlement of disputes,⁸ amongst themselves, they were not interfered with.⁹ But the Company's officers often sought to apply their processes against the native inhabitants who were

* *E.g.* succession, probate, ecclesiastical and marine matters, etc.

* See the discourse per Lord Brougham in *Mayor of Lyons vs. East India Company*, 1 M.L.A. 272.

the subjects of the Mughal Emperor. The position was never very clear; but it seems that there were interferences¹⁰ at times by the officers of the Mughal Government. The practice which developed and was conceded to, was that natives who were dependent on, or connected with, the Company and lived within their "settlement," were subjected to the jurisdiction of the English tribunal. Gradually this practice extended to those who lived in the neighbourhood, and the Company even ventured to exercise the same powers when the persons lived far beyond. The Committee of Secrecy, 1773 (Sixth Report), observed that so far as regards persons who lived within the "settlements," or at the most in the neighbourhood, the practice was perhaps justified on the analogy of similar privilege in the French and Dutch settlements; but when the Company's men proceeded beyond these limits, it "was an abuse."

4. While this has been one way of approaching the constitutional propriety of these tribunals, another way has been to treat these Charters as assertions of practical sovereign right on behalf of the King of England.¹¹ Probably this idea was not altogether out of the mind of the Directors of the Company: for, it was not long after, that they proceeded to enforce another sovereign-right when they imposed an "import duty" on their own account, on all goods brought into Calcutta, though they themselves enjoyed the privilege of free trade throughout the interior. This duty was

The Charters as meaning assertion of sovereign right.

¹⁰ Such interference gradually became only casual and feeble as the Mughal power itself became weak and demoralised. Cowell observes that sometimes when attempts were made by Mughal officials to interfere, they were bribed away by the Company's men; and what actually happened was that the "natives" living within the "fortifications" who were the servants of the Company's officers generally subjected themselves to the operation of the English tribunal: and "natives" who had pecuniary relations with the Company's agents also found it to their advantage to have recourse to this tribunal.

¹¹ Lord Macaulay, *Debates, Hansard*, Vol. XIX, pp. 506-07.

claimed as founded on what they called their "factorial rights" at Calcutta: and for many years after the assumption of full governmental functions, they treated this impost as separate from other customs. Yet, so long as they paid the stipulated annual land-revenue of Rs. 1,195 to the Nawab, they were only zemindars, and not a body possessing sovereign right.

5. The political aspect of the Company's occupation at Calcutta, was completely altered after the Battle of Plassey. Whatever the terms of agreement gone into later with Cossim Ali, the re-entry of Clive into Calcutta after his victory in this battle, had the character of a military conquest. If a conquest, it was a conquest on behalf of the English nation, and whatever controversy there might have been regarding the constitutional propriety of their administration in the three villages at Fort William, it was gone.

6. But if the Company happened thus to constitute a "Government," the revenues they derived from their occupation of these three villages, and the expenditure on the administration, were properly the concern of the Crown or the State: and the Company could not, constitutionally, count on them for their own profit or for the dividends of their stock-holders. There was, however, yet no interference¹² by the Parliament, and the Company's fiscal arrangements did not make any distinction between the accounts of their commercial enterprises and those on the purely "administration" side. The two were mixed up, and they were left free to appropriate the profit on the whole, for themselves.

Changed position after the battle of Plassey :
—and with regard to their appropriation of the revenues.

¹² The first interference, as we shall see later on, was in 1767.

7. The occupation of the twenty-four revenue divisions called *parganas*¹³ in the proximity of Calcutta, in 1757

Character of the
occupation of 24-
Parganas, Burdwan,
Midnapur and
Chittagong.

and of the three districts of Burdwan, Chittagong and Midnapur in 1760, was of a somewhat different character. The twenty-four *parganas* were obtained as a *jaigir*¹⁴ under a grant by Mir Jafar, to Clive, after the battle of Plassey, and the other three districts as an assignment by Cossim Ali, of the revenues derived in these territories, in order to enable the Company to meet their charges and expenses for maintaining an army.¹⁵ The revenues of these four districts (called then "the ceded districts"), were thus supposed to be the private property of the Company, and the profits their own. This made no difference in their fiscal arrangement: for there was no distinction in this respect even for the three villages in Calcutta where the position might be viewed differently. In other respects, however, a distinction was maintained: for, in these newly acquired areas, there was no attempt by the Company to establish a judiciary of their own or promulgate laws on the basis of those followed in England. The Royal Charters were not considered as giving them authority in this respect, nor did the *jaigir* or the cession of 1760, carry with them such authority from the still-admitted Mughal Government.

¹³ These comprised only a part of the present district of 24-Parganas. The area covered by the *Jaigir* was about 884 sq. miles.

¹⁴ This was a misnomer: see Land System of Bengal, p. 97.

¹⁵ Mir Jafar, on his installation as Nawab, had amongst other matters, agreed to a donation of Rs. 60,00,000 to the Company's army and navy, and payments to various English officials of sums amounting to Rs. 53,90,000. Being unable to comply, he pledged his jewels with the Company's Government at Calcutta and was compelled to offer portions of the revenues of Burdwan and Nadia as "tanewas" or assignments for the realisation of the dues. The offer did not materialise. Mir Cossim's assignment made three years later, was, generally, for the expenses of the Company's army.

8. Clive after his victory at Plassey, had asserted that he could, with no more than 2,000 British soldiers, keep the entire Province under subjugation. In the conditions of the time, he was perhaps quite right. The machinery of the Mughal Government in Bengal, had become disintegrated. A period of demoralised administration, verging on semi-anarchy ranging over about half a century, had so utterly enfeebled the Government and impoverished the people, that there was little fear of any effective resistance from anywhere. But, to assume the responsibilities of a government of so large a territory, was too great a venture for a trading Company as they were, unless backed by their own King and nation. In a letter to Pitt, dated the 7th January, 1759, Clive wrote :—" But so large a sovereignty may possibly be an object too extensive for a mercantile Company : and it is to be feared they were not of themselves able, without the nation's assistance, to maintain so wide a dominion." He then appealed to the Premier to consider—" whether the execution of a design that may hereafter be carried to greater lengths, be worthy of the Government's (meaning the King and the Parliament) taking it into hand." Even if the Company had undertaken the venture themselves, and succeeded, they could not constitutionally assert sovereign right except in the name of their King and the Parliament.¹⁶ They needed thus, in any case, the sanction of the Parliament : and this sanction, as we shall see later on, did not come forth till 1773.

¹⁶ Mill in his *History of India*, mentions it as " an indisputable maxim of law, supported by the strongest consideration of utility, that no subjects of the Crown could acquire the *sovereignty* of any territory for themselves, but only for the nation."

9. In the mean time the Company fought on in their own way to maintain their position. The importance of the cession of the three districts of Burdwan, Midnapur and Chittagong, lay in the fact that it supplied them with resources for maintaining an army of their own. After the battle of Plassey, it was clear what was the power which would rule the fate of the Nawab thenceforth. But there was obstruction from outside, and it was not till the army of the Nawab Vizier of Oudh was defeated at the battle of Buxar in 1764, that the last hopes of the adherents of the Emperor were sealed. It was then that the Company was really in a position to demand almost whatever they liked in respect of the three *Subahs* of Bengal, Behar and Orissa : and on the 12th August, 1765, they secured from the Badshah (Shah Alam) what is since known as the Company's Dewany of these three provinces. They had yet no "sanction" from the British Parliament, but the *Farman* by which the Dewany was granted, gave them the "sanction" which they needed for quiet occupation of this vast territory and for the appropriation of its revenues.

Company's struggles till the battle of Buxar, 1764.

The Dewany, 1765.

10. What exactly were the rights conveyed by the Dewany *Farman*, have been the subject of much academic discourse in later years.

Vagueness of the Dewany *Farman*.

The document was a very short one,—surprisingly short for the momentous change ("revolution" as Grant called it) implied in it. It stipulated for an annual payment of Rs. 26 lakhs to the "Sarker"—the Emperor in name at Delhi, mentioned the obligation of the Company to maintain an army and to meet the expenses of the *Nizamat*, whatever this meant, and permitted the Company to appropriate "whatsoever may remain out of the revenues of these

Provinces " after defraying these expenses. But what is most striking is that it made no mention of how the " government " of these territories was to be carried on, whether the Emperor would have any authority of superintendence or direction or what exactly was to be the position of his vicegerent,—the Nawab at Murshidabad. There was no reservation of power in any of these respects.

11. The effect of this was disastrous to the people of the country. The Company at first concerned themselves only in the collection of revenue, and there was no other authority to look after the government of the people. In a letter, dated the 17th May, 1766, the Directors wrote :—

The narrow view taken by the Directors.

" We conceive the office of the Dewan should be exercised only in superintending the collections and disposal of the revenues * * (and) should extend to nothing beyond the superintending of the collections of the revenues and the receiving of the money from the Nawab's Treasury¹⁷ to that of the Dewany of the Company." This looks as if the Court of Directors imagined (as curtly observed by Firminger) that " all that it behoved their servants to do was to lie beneath the tree and let the ripe fruit tumble into their open mouths." But for some years the ripe fruits did tumble into their mouths and the Company made immense profits from the Dewany territories. The territorial revenues¹⁸ and expenditure during 1765-66

Revenue and expenditure during 1765-66 to 1770-71 ; large surplus—

¹⁷ The existing mode of collecting the revenues from the zemindars and others by the native agency was continued during this period : and the money collected was first deposited in the Nawab's Treasury or *Khalsa* at Murshidabad.

¹⁸ i.e., excluding profits from commercial investments.

12 ANALYTICAL SURVEY OF BENGAL REGULATIONS

to 1770-71, in thousands of pound sterling,¹⁹ were as below :—

		Revenue	Expenditure	Surplus
1765-66	..	1,681	1,210	471
1766-67	..	2,550	1,274	276
1767-68	..	2,451	1,487	964
1768-69	..	2,401	1,573	828
1769-70	..	2,118	1,753	365
1770-71	..	2,010	1,732	278

Part of the surplus was diverted to meet the deficits²⁰ in Madras and Bombay, and the remainder went to profit account and dividends of the stock-holders of the Company. Besides this, the servants of the Company, who had full liberty to have commercial business on their own private account,²¹ made large profits and returned to England

¹⁹ The figures are taken from the admirable collection by Dr. P. N. Banerjea, in his *Indian Finance in the Days of the Company*, published in 1928.

The statistics of trade given by Hastings in a letter to the Court of Directors in 1775 (Proceedings of the Council, dated 22nd April, 1775) show that up to 1771, the tonnage of vessels arriving in the river Hooghly was 25 thousand and the gross duties Rs. 2 lakhs. In 1774 the tonnage was about 44,000 and the gross duties Rs. 4 lakhs 41 thousand.

²⁰ The deficits in Madras during this period amounted to £1,143,000 and in Bombay—£1,384,000.

²¹ This license of private profit was carried to rather extreme extent. The salt-monopoly assumed in 1765, continued for some years to provide for the profit of an exclusive society of European servants of the Company. The opium monopoly, up till the reform of Warren Hastings in 1773, was entirely a profit of selected officers of theirs, managed by the servants of the Patna factory for their own benefit (Select Committee, 1783, Ninth Report).

The weakest spot in the Company's administration at this period, wrote Verelst, was the "commercial preoccupation" which was permitted to the members and officials on their private account. Much of the abuses was due to the combination of these functions "particularly as their salaries were inconsiderable when compared with their earnings by these private means." This position evoked the angry words in Seir Mutaquerin, for which there was good deal of justification.

immensely rich.²² People in England thus had, in those days, "wonderful visions of the wealth of the East." It was, as observed by historian Mill, a period of delirium, and the price of India-stocks rose so high as 263 per cent. The huge profits derived by the Company drew the attention of the Parliament; and the first overt act they did to interfere with their affairs, was to lay a claim to a portion of these profits. An Act passed in 1767 required that, for the next five years the Company should pay £400,000 annually into the British Exchequer. Still they calculated that the dividends of the share-holders would be at least 10 to 12½ per cent.

Effect in England :
Parliament claims
a share of the
surplus.

12. It was, however, not long before those who were thus profiteering for the time, began to realise that the "tree" could not continue to yield "ripe fruits," unless it was "nursed" and kept alive. The "paternal" care of the monarch which characterised the best administered period of the Mughal rule had long ceased : and even the vital institutions of Government fell into disorder as the monarch's power became more and more feeble. Particularly so in the distant province of Bengal where there were other elements of disturbance. The bigger zemindars carried on, in their own way, the responsibilities for maintaining the Police which lay on them : but, as the Mughal tribunals of justice got disorganised these persons easily stepped in and assumed judicial functions, both in civil and criminal matters.²³ The powers thus exercised, uncontrolled by any superior

Disorder in internal
administration
of justice, etc.

²² They were thus nick-named "Nabobs."

²³ They came in as if just to occupy a vacant place. The bulk of the people were their tenants, and they needed some authority which would settle their disputes and give them some redress. The history of the origin and growth of the zemindari system in Bengal, gave nothing strange in their resorting to the zemindars whom they called their *rajas*. See *Land System of Bengal* (C.U., 1940), Chapters II, III and IV.

authority, soon became a source of profit²⁴ to them and oppression to the people. The position was heading a climax when after the Dewany of 1765, there was no authority which even professed that it was responsible for these matters. Oppressed and fleeced, the general body of the people were on the verge of ruin and starvation; and collections of revenue fell much short of the demand,²⁵ and heavy arrears went on accumulating. The officials began to smell embezzlement and accused the Naib Dewan, Md. Reza Khan and Nand Kumar. In 1769 the authorities, in their search for increased revenues, decided to introduce a novel plan²⁶ of settling the zemindaries by auction, with the highest bidders. Many zemindars were dispossessed of their hereditary estates, and those who could retain, had to bid for impossible amounts which they could not be expected to pay unless the tenantry were heavily oppressed. Outsiders who came in, were only adventurers who naturally sought to make the best of the short period for which they engaged, oppressing the tenantry still more heavily.

²⁴ The practice to levy a fourth, tenth or fifth part of the value of the property restored, called "chauth," "dassatra," and "pachattrā" (to which reference is made in the Regulations of 1772), probably grew up from this. After all, these self-constituted tribunals had to be at least self-supporting.

²⁵ The demands which the authorities wanted to exact were the assessments made by Cossim Ali when he was made Nawab in 1760. It was overlooked that it was only a paper-assessment, so exorbitant that it raised even the assessment in Ali Vardi Khan's time (1756) inclusive of all *absences*, by about 70 per cent. The latter amounted to Rs. 153 lakhs, while the demand according to Cossim Ali's assessment amounted to Rs. 256 lakhs.

²⁶ They were lured by what they thought a success by this method in the 24 Parganas and Burdwan (Court of Directors' letter of 11th November, 1768): but the strong remarks of Verelst from his experience as Superintendent of Burdwan, quite correct as they were, were overlooked. See *Land System of Bengal*, p. 86.

13. But the crash came almost simultaneously with the introduction of this novel method. A single season's failure of crop was enough to bring about a severe famine,—the Great Famine of 1769-70. It was followed by a pestilence so devastating that it swept away over one-third of the population. This meant that about 5 million persons perished within a few months. Ghulam Hussain, an eye-witness of the time, wrote in his *Seir Mutaquerin* that the famine and the pestilence raged so violently in the month of Muhurram, that "vast multitudes were swept away: nor can their number be known but to Him." He added that "whole villages and whole towns were swept away by these two scourges." But a more vivid picture of the scenes of this devastation, is given by Shore in the following lines, which though poetry, adhere, as observed by Sir William Hunter, "more closely to the facts than many men's prose";—

"Still fresh in memory's eye the scene I view,
The shrivelled limbs, sunk eye and lifeless hue;
Still hear the mother's shrieks and infants' moans,
Cries of despair and agonizing groans.
In wild confusion dead and dying lie;
Hark the jackal's yell and vulture's cry,
The dogs fell howl, as midst the glare of day
They riot unmolested on their prey;
Dire scenes of horror, which no pen can trace,
Nor rolling years from memory's face efface."²⁷

²⁷ Macaulay in his *Essay on Clive*, writes that thousands of corpses were rolled down by the river Hooghly every day, and even in Calcutta the streets "were blocked up by the dying and the dead." Tender and delicate women who had never appeared before the public gaze, came forth from their chambers and "threw themselves on the earth before the passers by, and with loud wailings, implored a handful of rice for their children." The horrors of this famine are still remembered in every house-hold of Bengal as the *Chhathar Manwantar*.

14. This great disaster roused John Bull from slumber. The Parliament appointed a committee, known since as the Committee of Secrecy, to report on the affairs of the Company: and the Court of Directors directed an enquiry into what was called "the scandals connected with the Famine of 1769-70." In April, 1772, Warren Hastings took over charge, from John Cartier, as President at Fort William, and with him a new chapter opened in the history of the Company's administration in Bengal. In July he put the Committee of Circuit on the enquiry ordered by the Court. Eventually, the Regulating Act of 1773 (13 Geo. III, C. 63)—the first Indian Constitution by the British Parliament—was passed.

15. Public opinion had, however, been growing in England from before. The Court of Directors began to feel that the narrow view they had taken of their position could not be maintained. In their letter dated the 30th June, 1769, amongst other suggestions, they made mention

of the *Faujdari* (criminal) Courts, the native law of inheritance, hoarded coins, etc. In September the same year,

they appointed a Commission²⁸ to make an enquiry about the manner of administration of justice, and how it could be controlled and regulated. In March, 1770, they proceeded to frame a constitution for the conduct of their affairs in Bengal by the normal agency of the Governor, his Council and Select Committee. This Council was to consist of nine members besides the Governor himself and the Military Commander. The Select Committee was to consist of the Governor, the Military Commander and three senior Members of the Council,

¹ This commission never worked: for the frigate (*Isurora*) in which the members were coming, was lost in the sea.



and it was invested with power to make "regulations concerning peace and order and negotiate with the country powers, but not finally to conclude any treaty." A start was given in bringing judicial administration under the control of the Company's officers. The European revenue-officers in each district, called "Supravisors" or Supervisors, were enjoined¹ to see that justice in criminal cases was not marred by composition by fine or mulct. Where any disputes arose out of property, the Supervisors were to see that the persons who administered had proper credentials.² A definite assertion of their changed policy was not, however, made till 1771. In a letter dated August this year, the Directors issued orders to the President and Council "to stand forth as Dewan and by the Agency of the Company's servants and to take upon themselves the entire care and management of the revenues." By this they did not mean mere collection, but wider functions of Government which would have to be administered with the revenues realised and by the agency of their own officers. James Mill has thus called this the real "revolution,"—the most memorable stage in the evolution of British sovereignty in India. "It was," he writes, "an innovation by which the whole property of the country, and along with it the administration of justice, were placed upon a new foundation." Whatever vacillating policy they might have had before, they could not, after the disaster of 1769-70, continue in it any longer. They felt the trend of public opinion in England; and the steps they took were in anticipation of the "sanction" from the Parliament which they eventually obtained in 1773 and more clearly in 1781.

¹ Letter of instructions to Supervisors in 1769: Colebrooke's "Supplement," p. 174: Harington's "Analysis," II-4.

² The position at the time was that "the regular course of justice was everywhere suspended, but every man exercised it who had the power of compelling others to submit to his decisions."—Letter of 3rd November, 1772, from the President and Council to the Court of Directors.

16. Warren Hastings was sent out in 1771, to give shape to the new plan of administration. He took over charge from John Cartier in April, 1772. In July he deputed the Committee of Circuit on the enquiry which had been directed by the Court, relating to the Famine of 1769-70. What he felt strongly was the necessity of quick action, and in the same year he drew up a series of Regulations—the first code of the Company's time—which encompassed practically all the main branches of administration by a Government with full responsibility as such. He stopped the annual payment of Rs. 26 lakhs to the "nominal" Emperor at Delhi, and thus threw off the "masque"¹ which had been a "farce" and the cause of the "irresponsible" administration hitherto followed. He did not trouble himself with "casuistical discourses" of the constitutional position—whether express "sanction" was necessary either from the Mughal Emperor, though reduced to a "name" only, or from the British Parliament. Facts were facts: and here was a vast country without any Government—and yet a country in which the English Company were vitally interested and where by the trend of events they had become the only power which could form a Government.

17. Later jurists have sought for a justification of these Regulations as law, lawfully promulgated, on the basis of the Dewany grant itself. James Mill, in his *History of British India*, has observed that "the

¹ This was the expression used by Clive with reference to the nominal recognition of the Mughal. The coins struck in the Company's Mint, however,

farman of the Dewany, which makes one of the most conspicuous eras in the history of the Company," constituted "them masters of so great an empire, in the name and in responsibility, as well as in power." The *Farman* lacked details, but it purported to leave nothing as "residuary" function which would be exercised by the Emperor at Delhi as the Sovereign. What could at most be said was that the administration of criminal justice—the *Nizamat*—was to be in the hands of the *Nawab-Nazim*, but all the rest, including the army, were entrusted to the Company. All this was perfectly true: but to argue that the *Dewany Farman* was the authority for these Regulations, implied recognition of the Mughal Sovereignty and obeisance to the Emperor at Delhi. The main token of this obeisance vanished when the annual tribute of Rs. 26 lakhs was stopped, and the position was such that the Emperor had no power to compel the Company. Warren Hastings did not stoop to seek guidance from the Mughal Government at Delhi, but acted on directions from the Company's Directors, and inspiration from the growing public feeling in England. The only question thus was whether, in the absence yet of any statutory sanction from the Parliament, the Company's officials could promulgate any laws which meant assumption of Sovereign right. It has been a highly controversial question: for, it is a well-recognised rule of constitutional law that no subject or body of subjects can exercise Sovereign right except for and on behalf of his or their own nation or King.

bore the name of the Emperor at Delhi, till 1833: and the Nawab at Murshidabad was, till 1790, considered as the person whose formal sanction was necessary in cases of capital and certain other sentences of the *Nizamat Adalats*.

18. What the Company had done up to this time was that they assumed complete control of the revenue departments—not merely the function of collecting, but also the function of directing the methods of assessment. In the 24-Parganas which Clive got as a *Jaigir*, they had proceeded to impose a class of super-zemindars by settling the area in lots with outsiders at public auction. Later, when they obtained the cession of three districts in 1760, they tried the method of auction settlement in Burdwan—a method which was bitterly criticised by Verelst. When they obtained the Dewany of the entire Province in 1765, they let a trial to the absurd assessment made by Cossim Ali in 1760 on the rest of the districts (called the “Dewany area” as opposed to the previously ceded districts), through the existing “native” machinery : and when this was found to be a failure, they proceeded to adopt a different plan of assessment by auction and a different machinery, without any reference to the Mughal Emperor.¹ Similarly in the other branches of revenue, such as Opium and Salt, they had their own way of imposing the assessment and making collection ; in fact, they assumed the entire monopoly of these two articles. In the department of trade and commerce, they had their commercial agents throughout the country, and these persons carried on the Company’s trade free from any internal duty to which others were subject. The same privileges were enjoyed by the Company’s European officers and servants, who were permitted to carry on trade on their own private account.

¹ Settlement by auction was never a method recognised by the Mughal constitution. It is true that between the years 1725 and 1756 irregular methods were adopted by additions of *Subahdarī abwabs* to the assessed *jumma* : but the constitutional method of assessment, even in Murshid Kuli Khan’s time, was to base it on the ascertained actual assets.

19. Warren Hastings's Regulations of 1772 were the next step for the assumption of wider powers of Government, particularly in the field of administration of justice. In the first place, he assumed complete control of the civil judiciary. The previously existing machinery, howsoever it might have been functioning, was completely replaced by Courts presided over by European officers. These were called *Muffussil Dewany Adalats*; and over them was the *Sadar Dewany Adalat* consisting of the President and two members of his Executive Council. The European officers who presided over the *Muffussil Dewany Adalats* in the districts, were the same persons who were in charge of the administration of revenue. The personal laws of the inhabitants were not sought to be interfered with, and it was definitely enjoined that in all suits regarding inheritance, marriage, caste, etc., the laws to be followed were to be "the laws of the *Koran* in the case of Muhammadans, and those of the *Shastras* in the case of the Gentoos," and that on all such occasions "the Maulvis or Brahmins shall respectively attend to expound the law, sign the report and assist in preparing the judgment." (Regulation dated the 15th August, 1772.)

20. On the criminal side, the change effected was less radical, though substantially effective control was assumed. In the districts, the irregular administration of criminal justice by zemindars and other persons of local influence was sought to be replaced by a better re-organisation of the Mughal constitutional system of *Kazis* and *Muftis*. Such persons, with proper credentials from the authorities, were to hold courts at the district headquarters, and pass judgment; but their proceedings were to be under the close supervision of the European Supervisor or Collector. In the *Nizamat*

Criminal justice.

Adalat at Sadar, the officer to preside was to be an officer appointed on the part of the *Nazim*, associated with the chief *Kazi*, the chief *Mufti* and four capable Maulvis. Their duty was to revise the proceedings of the *Muffussil Fauzdari Adalats*, and in capital cases to signify their approval or disapproval and draw up warrant for the *Nazim's* seal and signature. But this was only a show that the *Nazim's* authority, as reserved in the *Dewany Farman*, was being respected; for, here also the Governor and his Council were vested with the same powers of control over the proceedings as the European heads of districts had over the *Muffussil Fauzdari Adalats*.

Hastings did not attempt any material change in the existing system of Police. The

Police. Police stations and the rural watchmen continued to be maintained by the zemindars, and the responsibilities of the zemindars in these respects, and for the maintenance of peace, subsisted.

21. In the administration of revenue, the controlling
 Revenue admini- councils at Murshidabad and Patna func-
 stration. • tioned till 1772, when a Revenue Board, consisting of the whole Council, took over direct dealings with local officers. The clandestine manner in which the revenues from Opium and Salt were being appropriated by the officers of the Company for their own private benefit, was stopped by Warren Hastings. He introduced the "contract system" for Opium, and a "farming system" for Salt. The manufacture of Opium was definitely treated as an item of investment of the Company's money, and a "monopoly"; and he introduced the plan of "advancing" money to opium producers through the contractor. The earlier conflict between the Nawab and the Company, regarding inland trade, was closed, and the Company's agents carried their goods, to and from the interior, free of any transit duty.

The Regulating Act of 1773: The First Indian Constitution by the British Parliament.

22. This was the general scheme of Government which Warren Hastings put into operation almost in the very year he assumed charge. It was, however, mere casuistry to say that the Regulations were "law" promulgated under the authority, express or implied, of the *Dewany Farman* of the Mughal Emperor at Delhi. That *Farman* had been thrown out when the tribute to the Emperor was stopped. Nor could the existing Charters be construed as giving them such governmental authority in the name of the King of England. It was at this stage that the Regulating Act of 1773 (13 Geo. III, C. 63), rightly called the First Indian Constitution by and under the authority of the British Parliament, was passed. The Act provided for the appointment of a Governor-General with a salary of £25,000 and four Councillors with a salary of £8,000 each.¹ It then declared that "the whole of the civil and military government of the said Presidency, and also the ordering, management, and government of all the territorial acquisitions and revenues of the kingdom of Bengal, Behar and Orissa, shall be and hereby are vested in the said Governor-General and Council * * * in like manner to all intents and purposes whatever

¹ The first Governor-General and the members were nominated in the Act, and were appointed for five years: and thereafter the Company would nominate the officers.

The Court of Directors consisted at this time of twenty-four members elected by the Court of Proprietors, i.e., the body holding the stocks of the Company. Every holder of 500 stock had a vote in the Court of Proprietors, and a holder of 2,000 stock or above was eligible for election as a Director. In 1781 a Parliamentary Committee, called the "Board of Control," was constituted as a *liaison* between the Parliament and the Company. By Pitt's Act of 1784, the Court of Proprietors were deprived of the power of revoking or modifying any proceedings of the Court of Directors which had received the approval of the Board of Control. This Board consisted of six Privy Councillors (including one of the Secretaries of State) and the Chancellor of the Exchequer. The number was gradually reduced, and the powers concentrated in the President. The President and the Board of Control were thus the predecessors of the later development of Secretary of State for India and his Council.

as the same now are or at any time hereafter might have been exercised by the President and Council or Select Committee in the said kingdoms." It also empowered the Governor-General and Council "from time to time to make and issue such rules, ordinances and regulations for the good order and civil government of the said United Company's settlement at Fort William aforesaid and other factories and places subordinate, or to be subordinate thereto, as shall be deemed just and reasonable (such rules, ordinances and regulations not being repugnant to the laws of the realm), and to set, impose, inflict, and levy reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances and regulations."

23. The Act purported thus to give the Company all the powers they needed. But serious complications soon arose which threatened to paralyse the revenue administration by the Company's officers. By this Act, a Supreme Court of Judicature, independent of the Governor-General and his Council and distinct from the Sadar Dewany and Nizamat Adalats, was established at Calcutta. The Judges were appointed by the King, and hence this Court came to be called also the "King's Court," to distinguish from the *Sadar Dewany Adalat* (and the *Nizamat Adalat*) established by the Company itself. The Charter from the King, which followed the Act, gave the Supreme Court jurisdiction, in civil matters, over "all Europeans and British subjects resident in Bengal, Behar and Orissa, and over other persons who, either at the time of bringing the action, or at the time the action accrued, was employed or was directly in the service of the Company, or any other of our subjects." Clause 13 of the Charter further laid down that the Supreme Court was to have jurisdiction to try any action or suit "against every other person or persons, inhabitants of

Complications
from the Supreme
Court established by
the Act.

India, residing in the said Provinces * * * * upon any contract or agreement in writing entered into by any of the said inhabitants with any of His Majesty's subjects where the cause of action shall exceed Rs. 500." In regard to criminal jurisdiction, the Court had authority of Commissioners of Oyer and Terminer and Gaol Delivery "in and for the town of Calcutta and the Factory of Fort William in Bengal, and the factories subordinate thereto."

24. Thus there were two parallel tribunals, *viz.*,—

(1) the *Sadar Dewany* and *Nizamat Adalats* with their subordinate Provincial and District Courts,¹ administering the Hindu

and Muhammadan law and procedure, as adapted by the rules in the various Regulations, but otherwise identifying themselves with the executive Government; and (2) the the Supreme Court of Judicature established by the Parliament, administering the English law and procedure, and independent of the executive Government. The obvious intention of the Act of 1773 was to restrict the Regulations and Ordinances of the Governor-General and Council to

the natives of the country; and the jurisdiction, both civil and criminal, over European British subjects, including the

European officers of the Company, was conferred on the Supreme Court. There was no exception for official acts; and in fact Section 33 of the Act provided for prosecution of officers before the Supreme Court for breach of public trust, embezzlement and other misdemeanour. The Judges of the Supreme Court interpreted all these provisions to mean that their function was primarily "censorial" in respect of all acts of the executive Government. The

¹ Under the orders of the Directors, the posts of Collectors were abolished; and in November, 1773, five Provincial (or Divisional) Councils were established at Calcutta, Murshidabad, Burdwan, Dinajpur and Dacca. Native officers, called *Aumils* or *Diwans*, remained in charge of districts.

officials bitterly demurred : and the conflict which developed assumed on occasions ugly personal rancour. But the Supreme Court probably went too far when it questioned the authority of the Governor-General and Council to establish subordinate authorities as the Provincial Councils or the Courts ; or promulgate for the revenue administration rules and regulations which appeared to the Supreme Court as not just or proper. What threatened to paralyse the executive Government was the interference by the Supreme Court in cases when a person or his surety was arrested and put in custody by the Provincial Council for defaulting in the payment of revenue, according to the practice of the time. The Supreme Court was in some cases quite sober and refused to interfere " except in manifest cases of corruption " ¹ ; but in other cases its expressions were unnecessarily provocative and implied as if the Court intended to subvert the subordinate executive

Some instances to illustrate the conflict that arose between the Executive Government and the Supreme Court.

authorities as having no lawful status to function. In a case of a surety for revenue (*maljamin*) named Sarup Chand, the revenue was not paid in time, and the Chief of the Dacca Council put the man under arrest. Sarup Chand made a counter-allegation that he had lent a large sum of money to the Chief, which was not repaid. Thereupon the Supreme Court issued a writ of *habeas corpus*. The writ could well be justified on the ground of the allegation made by Sarup Chand, but Mr. Le Maistre, Judge of the Supreme Court, put the question : " Who are the Provincial Chief and Council of Dacca ? " And then proceeded to make the following striking observation : " They are no *corporation* in the eye of law. * * * A man might as well say that he was commanded

¹ Case of Dutt vs. Hosen.

by the King of Fairies, as by the Provincial Council of Dacca ; because the law knows no such body." By legal quibbling the doctrine of *delegatus non potest delegare* was inducted in the argument, because the Act mentioned only " the Governor-General and four members of his Council." In another case, the Ranee of Burdwan was kept imprisoned in her house for non-payment of revenue. The Supreme Court was inclined to send a warrant for the arrest of the Chief of the Provincial Council at Burdwan, Mr. Higginson ; but out of " personal respect and regard " a summons only was issued requiring him to " attend without delay." He was directed to set the Ranee " at liberty to do what and go where she pleases." A constable was, however, sent to apprehend the man who had been put in charge, and the person who commanded the sepoy was also summoned.

25. Such inteference was not confined to cases where a European officer was the party offending. The Supreme Court interpreted that the words " employed " and " directly or indirectly in the service of the Company " comprehended, besides the native officers of the Company, persons such as zemindars who were liable under their engagements to pay land-revenue, contractors of the Salt and Opium departments and so forth. In the case known as the Cossijurah case, one Cossinauth Babu sued the Raja of Cossijurah for money which he had lent to the latter. The Governor-General had, at this time, on the advice of the Advocate-General Sir John Day, notified to the zemindars and others that they were not employees or servants of the Company,¹ and thus were not amenable to the Supreme Court. The Supreme Court, however,

¹ The question had another important aspect. Were the zemindars mere servants, officers or agents of the Company, the party liable to pay the money borrowed by them to meet the Government revenue, would be the Company—their principal,—unless criminal embezzlement of money, actually collected or borrowed, could be proved.

sent the Sheriff with a writ to arrest the Raja. The

Supreme Court's claim of jurisdiction over the zemindars and others, as being officers or servants (agents) only of the Company.

Raja's men drove him away : whereupon the Court sent a force of some sixty or seventy persons, mostly sailors from the ships, who marched from Calcutta to Cossijurah and seized the person of the Raja. But under the orders of the

Governor-General and Council, Col. Ahmuty with his troops at Midnapur surrounded the Court's Sheriff and rescued the Raja. Cossinath in his turn brought an action for trespass against the Governor-General and the members of his Council, individually, before the Supreme Court. We need not digress into the details of what followed, except to mention that the wrath of the Supreme Court fell on poor old Mr. Naylor who was the Company's attorney. He was put in prison and there he died.¹

26. These few instances are illustrative of the kind of conflict which arose between the executive Government and the Supreme Court.² They do not form an amiable subject for contemplation : but it cannot be gainsaid that there was a silver lining in them ; for these interferences by the Supreme Court were not altogether without a salutary effect. The unrestrained activities of the Company's officers in India³ were at this time being severely

Situation relieved by the Act of 1781.

¹ Another instance of a similar innocent victim was the *Kazi* (along with him the *Muftis* aiding him) who had prepared an inventory and an award under the orders of the Provincial Council at Patna, in the case of the property of one Shahbaz Beg. The Supreme Court prosecuted the *Kazi* and the *Muftis* for assault and battery, and sentenced them to six months' imprisonment.

² A full history of the conflict is given in the report of the Parliamentary Committee (Touchet's Committee) which was published in 1781.

³ Apart from the viciousness of the combination of mercantile and administrative functions in the same body, the civil servants had still considerable latitude in trading on their private account, direct or *benami* : they were not altogether without influence over the Directors at home. See the account in P. E. Roberts, "History of British India," Chap. XIX.

criticised and it was not without a purpose that an independent judiciary was established by the Parliament.¹ However, no Government could be expected to carry on its functions in the midst of such conflict and mutual suspicion between its executive and the judiciary. The tense situation was relieved eventually by the Regulating Act of 1781 (21 Geo. III, Cap. 70). This Act recognised the tribunals and other authorities established by the Company, and laid down that "the Governor-General and Council shall have power and authority from time to time to frame Regulations for the Provincial Courts and Councils." The Act further laid down that the Supreme Court was not to have jurisdiction in matters concerning the collection of revenue according to the usage and the Regulations of the Governor-General and Council. It then explained that no person was liable to the jurisdiction of the Supreme Court by the reason of his being a landholder or a surety, or by the reason of his being employed by the Company or by a British subject. The jurisdiction of the Supreme Court, regarding acts of the Company's European officers in their official capacity, remained restricted to cases of corruption and embezzlement; and later, in 1793, another statute (33 Geo. III, C. 52, Section 52) explained the procedure in case of a prosecution.

27. The Acts of 1773 and 1781 thus constituted the authority for the Regulations promulgated by the Company up to February, 1834. An Act of 1833 (3 & 4 Will. IV, C. 85) vested the Governor-General of India in Council with more extensive powers of legislation,

Acts of 1773 and 1781—authority for the Regulations.

¹ One amusing instance shows incidentally that the superiority of the Supreme Court was recognised. It was the quarrel between Hastings and Clavering as to who was really the Governor-General. The question was submitted to the Supreme Court, and Hastings won: see the article "The Governor-General of a Day," in *Bengal Past and Present*, Vol. I and Vol. XII.

and the laws passed thereafter were called "Acts" and not "Regulations".

The Regulating Act of 1773 required that the provisions of any Regulation must be duly registered in the Supreme Court "with the consent and approbation of the said Court," before they could be considered to have any force or validity.

Conditions by the
Act of 1773 :

The Act of 1781 next required that all Regulations relating to Provincial Courts and Councils must be transmitted within six months to the Court of Directors and to one of His Majesty's Principal Secretaries of State, and might be disallowed or amended by His Majesty in Council. A considerable number of Regulations were thus passed up to the year 1793, when most of them, with modifications and elaboration, were consolidated in the series of Regulations promulgated on the 1st of May of that year.

—by the Act of
1781.

Regulation XLI of 1793 laid down that all Regulations should be numbered, and bound up into a regular Code.

Method of pro-
mulgation.

They were also required to be printed and translated for wide circulation amongst the officers, courts and the public. The Preamble to this Regulation declared that "new Regulations will not be made, nor those which may exist be repealed, without due deliberation." An Act passed in 1797 (37 Geo. III, C. 142) endorsed the plan in the Regulation of 1793, and to give it the stamp of parliamentary authority, repeated the provision in the Regulation of 1793, that all Regulations which would be issued and framed by the Governor-General in Council, affecting the rights, persons or property of the natives or of any other individuals amenable to the Provincial Courts of Justice, should be registered in the Judicial Department, formed into a regular Code and printed with translations in the country languages; and that the "grounds" of each Regulation should be prefixed to it.

28. The Regulations thus promulgated and put into a regular Code, during the years 1793 to 1834, numbered as many as 675, a tremendous legislative work, judging from the meagre official agency available in those days. On the other hand, the legislators were untrammelled by lengthy debates and counter-debates, the first reading, the second reading and so forth, which make a legislative process of the present day a lengthy business. The most interesting parts of these Regulations are their Preambles. These Preambles, always numbered as Section I in each Regulation, give elaborate reasons with description of the conditions of the time and summaries of previous legislations and their effects. They were intended primarily to carry conviction with the Court of Directors and other authorities in England; but to-day, they are of inestimable value to any study of the evolution of the governmental methods during the Company's period.

Most of these 675 Regulations have since been entirely repealed or replaced by subsequent enactments. A good many which became obsolete, were formally repealed by the several Obsolete Enactments Repealing Acts, *viz.*, XIV of 1870, XXXIX of 1871, XII of 1873 and XVI of 1874. Only 45 of these Regulations are now in force in Bengal, and of these a good many are in a much amended form. The main features of these Regulations, both repealed and unrepealed, are summarised in the next few chapters, and for a fuller study a chronological synopsis of the Regulations bearing on the particular subject, has been given at the end of each chapter.

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General nature
of the Regulations
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relating to education¹ or public health²; nor any relating to agriculture and industry, except so far as the provisions regarding the Company's commercial activities and investments acted on the industries and production of the country. Several Regulations relating to embankments maintained at public expense had a direct bearing on agriculture; but otherwise works for agricultural improvement were, under the terms of the Permanent Settlement, and as a matter of "self-interest" to the landholding classes, left to the zemindars, talookdars and other landholders, and the tenantry.

30. The machinery of administration set up by the Regulations of Lord Cornwallis, may be stated as broadly divided into three parts, *viz.*, the Revenue, the Commercial, and the Judicial.

Machinery of administration under Lord Cornwallis' Regulations.

¹ The Calcutta Madrasah for Muhammadans was founded in 1782, and the Benares College for Hindus was established in 1791. But these were for higher oriental learning, primarily intended to produce Law Officers to expound the Hindu and Muhammadan laws to the Judges. But the general education, whether in the towns or in rural areas, was utterly neglected. It was left to village *pathsalas* and *mukhtabs* maintained by the people themselves so far as they could, without any assistance or guidance from the Company's administration. As a result of the movement led by Wilberforce, the Charter Act of 1813 directed for a provision of one lakh of rupees every year for education generally; but the amount was allowed to lapse, year after year. An humble beginning was made by Lord Hastings about 1820, when a few vernacular schools were established near Calcutta. English Education was started by Christian Missionaries. Carey established the Serampore College in 1818; and later, with funds from England, a College was started in Calcutta in 1820, in honour of Middleton. In about 1832, Dr. Duff, a Missionary of the Church of Scotland, founded another College in Calcutta. The Company's administration stood by, and perhaps viewed the development with mixed feelings. A change of policy came over after Lord Macaulay's celebrated Minute of 1835, but the new policy did not take shape till Lord Ripon's time.

² The indigenous system of *Kabiraji* and *Hakimi* did not find any support: nor was the Western system sought to be introduced till at a late period. The Calcutta Medical College was founded in 1835, but the Hospital was not established till 1852-53. The Presidency General Hospital, for the treatment of Europeans, was established in 1795.

The Board of Revenue, consisting of a President and four other members, was in charge of the Revenue branch, and a separate Board called the Board of Trade, controlled the Customs Department, the activities of the Commercial Residents and their Agents, and exercised also certain functions in the Opium and Salt Departments. The Collectors in the Districts were under the direct superintendence of the Board of Revenue, and had no judicial functions, civil or criminal.

For administration of justice, there were six Provincial Courts for six grand divisions, with head quarters at Calcutta, Murshidabad, Dinajpur, Dacca, Burdwan and Patna, each consisting of a Chief Judge and two other Judges. These Courts constituted also the Courts of Circuit in their respective divisions for the trial of criminal cases as were committed to them by the Magistrate. Below them were the Zilla Judges at the headquarters station of each of the twenty-four districts in which Bengal and Behar were then divided, and City Judges in the cities of Dacca, Murshidabad and Patna. These Zilla and City Judges were separate from and independent of the Collectors of revenue, and had jurisdiction to receive, and deal with judicially, all complaints or demands or exactions or other acts of the Collectors in contravention of the Regulations. In the administration of criminal justice, however, the Zilla and City Judges acted not only as Magistrates, but were also the Heads of the Police in their respective jurisdictions. They tried petty cases of assault, simple theft, etc., punishable up to 15 days' imprisonment, and committed the cases of graver offences to the Courts of Circuit, after a preliminary enquiry sifting the evidence collected by the Police.

Boards of Revenue and Trade :
Collectors.

Provincial Courts :
City and Zilla
Judges.

Zilla and City
Judges also Magis-
trates and Heads
of Police.

The final authority and control over all these several departments were concentrated in the Governor-General and his Council. They formed not only the authority empowered to make laws, and exercise general superintendence, but also constituted the *Sadar Dewany Adalat* and the *Sadar Nizam-at Adalat*—the High Courts of Civil and Criminal Justice.

Sadar Dewany and Nizam-at Adalats combined in the Governor-General and his Council.

All these arrangements applied fully with regard to the natives of the country. But the position regarding European British subjects was still unsatisfactory. The theory that they could not be made amenable to the tribunals set up by the Governor-General's Regulations, still held the ground. It was maintained that any tribunal competent to deal with their person and property, must have direct authority from the British Parliament; and the only such tribunal at the time was the Supreme Court of Judicature at Calcutta. To obviate the inconvenience to some extent, the Zilla and City Judges, acting as Magistrates, were vested with the powers of Justices of the Peace under authority from the Supreme Court¹; and in this capacity they apprehended offenders who were European British subjects, and then sent them up for trial by the Supreme Court at Calcutta. For civil claims, Regulation XXVIII of 1793 laid down that no European British subjects could reside beyond ten miles of Calcutta, unless they executed a bond submitting themselves to the jurisdiction of the civil courts established under the Governor-General's Regulations. The Zilla and City Judges were authorised to demand such bond, and in case of default, to send the defaulter up to Calcutta. The authority to enforce this last process was not, however, very clear.

European British subjects and the judiciary.

¹ The Supreme Court derived this authority to appoint Justices of the Peace, under 33 Geo. III, C. 52, Secs. 151 and 152.

31. This general plan of 1793 was maintained in its broad outline, practically throughout the rest of the Regulation period. The most important change was in respect of the judicial functions of the Governor-General and his Council. Several regulations modified the constitution of the *Sadar Dewany* and *Nizamat Adalats*, but a complete separation of their *personnel* from the members of the executive Government, was not effected till 1811. The qualifications of the Judges of these *Adalats* were laid down later by Regulation XXV of 1814, *viz.*, that they must have certain previous experience of judicial work.

The next important change was in the appointment of Divisional Commissioners, in 1829, as the confidential advisers of the Government in all matters. In the branch of revenue administration, the Commissioners were an intermediate functionary between the Board of Revenue and the Collectors. For some time they exercised the powers of the Courts of Circuit in criminal matters: and this was in pursuance of a new policy to abolish the intermediate judiciary of the Provincial Courts altogether. Already the Zilla and City Judges were given much larger jurisdiction than they originally possessed; and as Magistrates they could try more serious offences and punish up to two years' imprisonment. The combination of judicial powers in the Commissioners, who were the confidential advisers of the executive Government, was, on the face of it, open to grave objections; and within a few years a new plan was devised. According to this plan, the Zilla and City Judges were divested of their functions

Main changes after 1793.

Sadar Dewany and *Nizamat Adalats* separated.

Divisional Commissioners in 1829:

—also powers in criminal cases: ceasing in 1833.

Provincial Courts abolished: Magisterial powers transferred from Judge to Collector: Judge constituting Sessions Court.

as Magistrates—such functions being transferred to the Collectors, the Commissioners ceased to act as Courts of Circuit, and the graver criminal cases, which the Collector as Magistrate could not try, were committed to the Zilla and City Judges, constituting the sessions courts, much as we have to-day.

Magistrate-Collector the Head of the Police also.

As Magistrate, the Collector became also the Head of the Police in his district.¹

The Provincial Courts were abolished by Regulation II of 1833, and thereafter the Zilla and City Judges functioned directly under the *Sadar Dewany* and *Nizamat Adalats*.

32. The Commercial Residents entrusted with the Company's investments formed also an important element in the administration. The method they

The commercial residents and agents, and their special privileges and position.

sought to develop was one of direct dealing with the actual producers,—the weavers, the silk-winders, the salt-gatherers, the poppy growers² and the cultivators.

There were thus Commercial Residents in most districts with their agents and sub-agents, who distributed advances to these people or secured engagements from them, for specific supplies. Regulation XXXI of 1793 made special provisions with a view to afford security to the money invested by the Company, and collaterally gave special privileges to the Residents and their Agents which placed them in a position of considerable authority over the producers.³ The necessity for these special provisions disappeared when the Company's own monopoly

¹ Separate Superintendents of Police were not appointed till 1862.

² Indigo was a subject of special Regulation in Bengal in 1823. See Chapter XII.

³ They had special powers in enforcing their contracts : and legal processes on the producers engaged by them had to be served through the Commercial Residents, and could sometimes be adjusted by them. See Chapter XII.



gradually ceased; and eventually Regulation IX of 1829, rescinded these provisions, leaving the Commercial Residents and Agents "to follow the same process of law in the enforcement of contracts in their dealings with the natives of the country as individual traders."

33. One special feature of the administration of civil justice, practically throughout the Regulation period, was that commissions were issued to natives for enquiry and report in civil cases of small value; and the Zilla or City Judge would then pass the decree on the report of the Commissioner. Some of these "native Commissioners" (as they were called),—mainly zemindars, talookdars, farmers of land or their officers,—were permitted to receive and try suits of money-claims or personal property within certain limits. These persons were called *Munsif*-commissioners, but a salaried service of *Munsifs* was not constituted till 1831. In the mean time another class of judicial functionary developed from the Law Officers of the courts. They were called *Sadar Ameens*, and tried such cases at the Sadar or district headquarters, as were referred to them by the Zilla or City Judge. They did not, however, constitute a salaried service till 1824.

Regulations relating to justice generally based on sound principles.

34. The Regulations relating to the administration of justice were bold, and remarkably comprehensive, judging from the chaotic conditions of the time. They show a sincere desire to see that justice was meted out with fairness and impartiality, and that the people received protection of their rights and property from the law courts. The high ideals put forward by Lord Cornwallis¹ were generally sought to be followed throughout.

¹ See Preamble to Regulation II of 1793.

There were, however, unfortunate lapses when the revenue and commercial interests of the Company clashed with judicial administration. When zemindars, talookdars, farmers of land and their officers were permitted to exercise judicial functions, the avowed object was to place them in a position of influence over the tenantry so that they might realise rents from them more easily, and in their turn be able themselves to pay the Government revenue with punctuality. These provisions were not altered till larger powers were otherwise given to the landholders to enforce payment of rent without recourse to court, by the *haftam* (Reg. VII of 1799) and the *pancham* (Reg. V of 1812).

Lapses and incongruities when revenue or commercial interests clashed.

The Commercial Residents and Agents entrusted with the Company's investments had, as already stated, many special privileges for enforcing their contracts with the producers and other suppliers, and were also otherwise placed, by the authority of the Regulations, in a position of considerable power over the persons with whom they had dealings.¹

There was another lapse from the high ideal set forth by Lord Cornwallis. In the year following his departure, a Regulation was passed permitting civil courts to refer rent-suits to the Collectors for report after examination of accounts, and adjustment, when necessary. This practice gradually developed, and eventually the Collectors were given powers to receive and decide all claims for rent, summarily, subject to any regular suit by the party before the civil court later on. The reason was partly to save the parties from the lengthy and expensive procedure

¹ This, however, was not without a good side of it. These persons (weavers, silk-winders, and others) also enjoyed a certain amount of protection against the drastic processes of their landlords, and even against processes of the courts of law. They thus thrived so long as their business interested the Commercial Residents,

of a regular rent-suit in every case, but mainly to facilitate realisation of rents by the zemindars, so that they might themselves pay the Government revenue with punctuality. The same motives actuated the passing of the *Patni* Regulation of 1819, under which a *Patni* tenure in arrears of rent might be summarily sold in public auction by the Judge or his Registrar, without any previous adjudication regarding the zemindar's claim.

35. These are some of the lapses and incongruities in the Regulations relating to administration of justice. Nevertheless, the manner in which the authorities proceeded to reform the judicial practices of the time and stamp out many social evils, was undoubtedly highly commendable.

In criminal justice, they sought to follow the Muhammadan jurisprudence, previously established in the country, adapting it gradually to more advanced principles of humanity and "natural justice." The punishment of mutilation of limbs was abolished, and the humiliating practice of public flogging at the cart's tail, followed by the Mayor's Court at Calcutta, was not imitated. The inhuman practice of infant-sacrifice in the sea or river, and of *Sati*, under the umbrage of perverted religious faith, was stopped, and so also the practice of *dharna* in the Province of Benares, which sometimes extended to wounding and killing of females. Eventually a series of Regulations were passed, forming what may be called a Penal Code, and laying down the nature and limits of punishments which could be awarded for various kinds of offences.

In civil justice, the personal laws of the party concerned, whether a Muhammadan or a Hindu, were respected and followed in all matters relating to succession, inheritance, marriage, religious trusts and the like, and, in

Muhammadan
jurisprudence
adapted in criminal
justice.

Personal laws
respected in civil
justice.

the application of these laws of the country, the *Kazis* and *Muftis* of the earlier days, and *Pandits*, and also a special class of advisers, called Hindu and Muhammadan Law Officers, were freely employed to assist the Court.

36. But in the other spheres of administration, the policy and the methods of the Company's Government have been open to strong adverse criticisms. James Mill did not at all exaggerate when he said that the

Criticisms of the methods in other spheres of administration.

pronouncement of the Directors in 1771, that they should stand forth fully as Dewan, marked the real stage of "revolution" which ushered in the Company's rule in India. The announcement was short, but sufficient to indicate their intentions about the future plans. The *first* was that the administration should be

Meaning of the pronouncement of 1771 : exclusion of natives and diversion of Bengal's revenues.

taken over in the hands of the Company's own officers, to the exclusion of the Indians from any responsible position; and the *second* was that the revenues of the Province were to be considered as belonging to them and at their entire disposal, or as Mill put it, the Province was to be their "property." In pursuance of the first policy, high offices such as were held by Md. Reza Khan or Nandcomer or Sadr-ul-Huq Khan were abolished, and European servants of the Company were appointed to take charge of all responsible positions in the revenue and judicial administration. In pursuance of the second policy they freely diverted the revenues of Bengal for their needs in other parts of India, besides meeting all their expenses in England. To these were added a third factor, which lay in the combination of private trading interests and governmental functions in the same body of persons. As a result, many of the Regulations, otherwise well-intentioned, were often marred by provisions

which subordinated the wider interest of the people of the country to these extraneous considerations.

37. The Collectors of revenue in the districts, the Zilla and City Judges and their Registrars, not to speak of the higher functionaries in the Provincial courts, the Boards of Revenue and Trade, the *Sadar Dewany* and *Fauzdari Adalats* and the Governor-General's executive and legislative council,—were all European servants of the Company. Much dirt was sought to be thrown on the natives of the soil, that they were by nature dishonest and could not be trusted¹; but this was unnecessary. It was a clear assertion of their position and function as the ruling power. This was what was meant when the Directors pronounced their intention to administer the Dewany through their own agency. In their letter to the Governor-General, dated the 12th April, 1786, this policy was further expanded. It stated that the natives of the country should be employed only in "duties of detail," the "laborious" part of office work, for which, "accustomed to the climate of the country," they were considered as "most competent." The Charter Act of 1793 also ensured the appointment of the members of the covenanted civil service to all principal and responsible offices.

Natives restricted to inferior and ministerial work.

Policy confirmed in 1786 and 1793.

38. A change in policy commenced about 1822. A Parliamentary Committee, which submitted their report in 1822, advocated the employment of educated Indians in higher services. Such employment, the Committee said, "would strengthen their attachment to the British Dominion."

Commencement of a change in policy in 1822.

¹ The *Kazis*, *Muftis*, *Pandits* and native Law Officers, whom they sought for opinion, were not mistrusted, and their opinions were treated with respect. These opinions could not be deviated from by the Provincial Courts unless the *Nizamat Adalat*, on reference made to it, so directed: see Reg. IX of 1793.

would conduce to a better administration of justice : and would be productive of a great saving in the expenses of the Indian Government.”¹ In the plan of land-settlement introduced in the ceded and conquered Provinces by Regulation VII of 1822, native Settlement Officers were employed with powers of settling disputes and determining fair rents. Three years later, the same plan was adopted in Bengal for the settlement of resumed *lakheraj* lands, *chars* in the beds of rivers, and of large tracts of waste land and

Deputy Collectors
in 1825-33.

jungle which were situated outside the limits of the permanently settled estates. These officers came to be called “Deputy Collectors,” and their service was formally recognised by Regulation IX of 1833. They were to be appointed directly by the Governor-General in Council, and they were required to take oath before assumption of office. The Regulation gave them power to act on their own responsibility in such revenue matters as were allotted to them, subject to the jurisdiction of the Collector in appeal and general supervision. In civil justice, Native Commissioners, casually employed with powers to receive and try civil suits within certain limits, being remunerated from the institution-fees in the particular cases they tried,

Salaried services
of *Sadar Ameens*
and *Munsifs*—1824-31.

were constituted into a salaried service of *Munsifs* under Regulation V of 1831. Native Commissioners employed as Referees or Arbitrators were never recognised in any salaried service : but *Sadar Ameens* trying cases as were referred to them by the Zilla or City Judge, at first remunerated from the institution-fees in the suits they actually tried, were formed into a salaried service by Regulation XIII of 1824. The measures taken during the Regulation period did not go further.

¹ This policy was embodied later in the Charter Act of 1833, which laid down that no one should be debarred from any public service by reason of his nativity.

39. Land-revenue was the main item of revenue when the Company acquired the Dewany.

Land-revenue the main source of revenue at first : development of other sources.

It formed then over three-fourths of the income of the State. Other sources of revenue which were rapidly developed, were :—(1) Customs and Inland transit

duty ; (2) Opium ; (3) Salt ; (4) Abkari ; (5) fees on institution of suits, and on petitions and pleadings, etc. ; (6) Stamp-duty on deeds ; and (7) taxes for the cost of the Police. These several subjects, and the Regulations bearing on them, have been dealt with in Chapters

VI to XI. During the eight years

Revenue £2·6 million in 1778 :

from 1771-72 to 1778-79 the revenue-receipts amounted to about £2,626,000

per annum (equivalent to Rs. 2·6 crores of the time).

There was a rapid increase during the next eight years, and in 1785-86 the total receipt

—£4·5 million in 1785 :

was as much as four and a half million pounds (or 4½ crores of rupees), of

which more than one-half represented sources other than land revenue. Eight years after the Permanent Settlement, the revenues of Bengal (including, of course, Behar as then known) rose to about seven

million pounds, of which 2·68 million

—£10 million in 1812 and £14 million in 1830.

represented the land-revenue. Thereafter the revenue steadily rose to £10

million in 1812-13 and to £14 million in 1830-31.

By far the greater part of the revenue from land was fixed in perpetuity : but it has to be remembered that the revenue fixed by the Permanent Settlement of 1793 was, in the conditions of the time, of the nature of an advance-assessment by about 60 lakhs of rupees,¹ and as such it was quite a good business

¹ See " Land System of Bengal," pages 131-36.



arrangement so far as the Company was concerned. Lord Cornwallis had also other high hopes. British power had not yet been fully established, and, besides the many troubles within India, there were dark clouds in the political horizon of Europe. If it willed Providence that British power would be perpetuated, he expected that whatever loss in the land revenue might be found at a distant future, would be amply compensated by the increase of revenues from other sources, and by the rapid growth of the Company's trade and commerce which would follow from this and his other measures. The broad figures of revenue, given above, indicate the extent to which his expectations were fulfilled in the course of the next forty years.

Land-revenue
being fixed, increase
mainly from other
sources.

40. But the uncomfortable feature of the fiscal policy of the Company lies in the manner in which the revenues derived from Bengal were diverted to meet the deficits in other Provinces, and the costs of the military operations, besides the expenses in England. During the period 1792-93 to 1808-9, the revenues of Bengal yielded an aggregate *surplus* of 27·4 million pounds over the expenditure, or over 27 crores of rupees. During the same period there were *deficits* in Madras amounting to 11·2 million pounds, and in Bombay 18·4 million pounds. The whole of the surplus from Bengal was drafted to cover the deficits of these two Provinces. A further sum of £2·8 million supplied to Bencolen, Penang, etc., was charged to India, and a net amount of £4·9 million was put on a debit loan account of this country.¹ It has been a highly controversial

Bengal's steady
surpluses : and
their diversion to
other Provinces and
outside.

¹ For a fuller account of how local surpluses were thus converted into deficits and added to India's debts in subsequent years, see Dr. P. N. Banerjee's "Indian Finance," Chap. III.

question whether the amount diverted outside India could be included in her debit-account ; but apart from it, the position as regards Bengal was extremely unhappy. The people of Bengal did not get full return for the revenues they paid. No attention was paid to public works,¹ education² or other needs of the country, while

Yet, every source
of revenue squeezed.

the large savings effected were lightly diverted to other Provinces and to extraneous purposes a broad. Bengal's capacity appeared to the Company as inexhaustible : and every source of revenue was squeezed.

41. Regulation XI of 1801 extended the Government custom at Calcutta to " goods exported from Calcutta into the interior of the country," and also established similar duty in certain other towns, *viz.*,
The inland transit
duty. Hooghly, Murshidabad, Dacca, Chittagong and Patna. It was a complete reversal of the policy adopted in 1793 (Regulation XLII) that all merchants and traders should be at liberty to carry their goods from one part of the country to another, free of all duties and tolls whatever. This inland duty did not affect, however, the Company's own trade through their commercial Residents and Agents ; for, they were exempted

¹ The first attempt to improve roads and communications was made in 1854. The receipts from tolls on ferries, and tolls on the Nadia Rivers and Calcutta Canals, were allotted to constitute a Fund for this purpose. Up till 1867 (shortly before the introduction of Road and Public Works Cess), the expenditure was almost the same as the receipts from these sources.

² How primary education for the masses was neglected came to the serious notice of the Government in 1868. In 1866-67, the number of pupils in the lower classes of Government and Aided Schools was as exhibited below :—

Bengal with a population of 40 millions	..	..	39,104 pupils
N.W. Provinces	..	30 ..	125,394 ..
Bombay	..	16 ..	79,189 ..
Punjab	..	15 ..	62,355 ..
Central Provinces	..	8 ..	22,600 ..

—Selected Papers relating to the introduction of Road Cess in Bengal.

from it.¹ The trade and business which suffered were those carried on by the inhabitants of the country independently of the Company's agents. Nine years later, Regulation X of 1810 extended this duty to practically all principal places,² the Company's own trade being free as before. The evils of this system were obvious : but it was not till the time of Lord William Bentinck that they were fully exposed.³ The system of inland transit duties was eventually abolished by Act IV of 1836.

42. The manner in which the Opium monopoly was abused during the early period of the Company's administration, was scandalous. It was worked for the exclusive profit of the European servants of the Company at their Patna factory. This was stopped in 1773, but Opium began to be looked upon as a very lucrative source of revenue, and it was mainly from this standpoint that the cultivation of the " poppy," and the industry, received encouragement through special provisions made in the various Regulations (see Chapter VIII). The trade was mainly with China, but the ugly implications in letting this evil pass on to other people, while the Company would be profiteering, were caustically exposed by John Bright in his speech in Parliament. Throughout the Company's administration, Opium was a strong lure for revenue. This revenue, which was about Rs. 17 lakhs in 1785, rose to Rs. 27 lakhs in 1800, and by the close of the Regulation period it was as much as one crore.

¹ This was sought to be supported by the ancient permission granted by Emperor Furruk-Sher, the import of which, (whether it extended to inland transit), was never free from controversy. In fact, it was one of the subjects of quarrel between Cossim Ali and the Company in 1762. But it was hardly proper to rake up this old permission when the more comprehensive *Dewany Farman* was abrogated, and complete Government was assumed independently of the Mughal Emperor.

² In Bengal, these further places were Midnapur, Burdwan, Krishnagar, Jessore, Natore, Dinajpur, Comilla, Islamabad, Nussseerabad and Rangpur.

³ Report of Sir Charles Trevelyan, who was employed by Lord William Bentinck for a special enquiry regarding the inland transit duty.

43. The early history of the revenue from the Salt industry, along 300 miles of Bengal's sea-coast, was equally scandalous. Under Clive's plan this revenue was allotted for the benefit of an "exclusive company or society" of European servants, who enjoyed the profits of the concern in lieu of salary. This was stopped in 1768, but soon after, Warren Hastings assumed the monopoly of the sale of Salt, instead of levying a duty on the manufacture. His plan was strongly criticised from the beginning: but one important effect of it was that the industry received a good stimulus from the Government. The Salt-makers were —thriving at first: given advances through the Company's agents, and several Regulations protected them from the processes which were available to landholders against their ordinary raiyats. The industry thrived and a million men found a living in it. The revenue from Bengal Salt, which was about Rs. 45 thousand only in 1772-73, rose to about Rs. 5 lakhs in 1783, and in 1810 it was one and one-third crore.

Thereafter, the policy changed. Foreign Salt took the market, and the Company-retrenched —but collapsed after 1817. their hands in the local manufacturing places. Nor was any effort made to improve the products, if it was at all true that foreign Salt was superior in quality or cheaper. The duty on imported Salt balanced the loss of revenue from local Salt; but the industry was ruined and a large population lost their living from this source.

44. A similar history marks the Company's treatment of the important industries of spinning, weaving and silk-winding. Same history for weaving. Bengal's fabrics, embroidery works, shawls and silk-products were highly valued in foreign countries. The organised efforts of the Company's agents, throughout

the interior of the country, gave a great impetus to the development of these industries ; but when, in pursuance of the same policy of preference to foreign products, the Company's agents retrenched their hands, this industry also practically collapsed. Several millions of men lost their employment, and incidentally there was rush to land, developing another serious economic problem.¹ A policy that Bengal would mainly be supplier of raw produce from the soil, and have finished articles from outside, was apparent during this period of the Company's rule.

45. No exception could be taken to the imposition of institution-fees in civil suits and fees on petitions and pleadings, which were introduced in 1797. The imposition

of a stamp duty on deeds was also a move in the right direction. But the levy of

Special tax for
maintenance of
Police.

a special tax for the maintenance of Police had little in it to justify. It was an essential function of every Government, and the cost should be a first charge on its ordinary revenues. Regulation XXIII of 1793 imposed a tax on shopkeepers, merchants and others, to defray the cost of the entire Police in the towns and in the districts. The tax was abolished in 1797, but it was revived in 1813 for certain towns ; and by Regulation III of 1814, it was extended to all headquarter stations of the Zilla Magistrates. This tax for Town Police continued throughout the Company's period, and was abolished much later when municipalities were established and municipal rates were imposed upon the residents and owners of houses. But the *chowkidari* tax in rural areas, which

¹ For, land alone cannot maintain the agricultural population of the country. It does not give more than 3 acres for a family : and the position to-day is the gravest possible. The remedy lies largely in the rejuvenation of lost industries and introduction of other industries, which would provide employment for the surplus population, as well as collateral occupation for the actual cultivators during the off seasons. See " Land System of Bengal," pages 16-18, 229.



still persists, is a burden on the poorer classes ; and as a special tax, it can hardly be justified.

46. Such, briefly, is the account of the administrative efforts of the Company so far as they appear from the " Regulations " passed by them up to February, 1834. There were many grave defects and lapses, but these were inevitable when the functions of Government and trading interests were combined in the same body of persons. Much of these would have been avoided, if the Crown had taken over the responsibilities of Government much earlier than it did. The question came up before the British public from a very early time ; but through intrigues and other causes, the Directors continued to retain their hold. The Charter Act of 1781, (21 G. III, c. 65) was content with a provision that three-quarters of any surplus after a dividend of eight per-cent. had been paid to the stock-holders of the Company came to the British Exchequer, and extended the Company's privileges for ten years on some nominal control of the Parliament through what were called " Select " and " Secret " Committees. Edmund Burke pointed out the uselessness of this supposed control, and the vicious circle in which the system actually worked. " The servants in India," he said, " are not appointed by the Directors, but the Directors are chosen by them. The trade is carried on with their capitals. To them the revenues of the country are mortgaged. The seat of the supreme Government is in Calcutta. The house in Leadenhall is nothing more than a change for their agents, factors and deputies to meet in." The reforms of Lord Cornwallis, the manner in which he organised the civil

Defects due to combination of interests.

Attempts to take over the Government, by the Crown : how frustrated.

Charter Act of 1781.

Charter Act of 1793.

service,¹ and in particular the "highly favourable balance sheet" then set forth, prepared a favourable ground for further continuation of the Company's powers. The Charter Act of 1793, thus gave them another extension. But a cry was already raised from the other seaports and manufacturing towns² in Great Britain, why such special privileges should be confined to the East India Company of London. The merchants of these places were placated with a concession of 3000 tons of shipping for private shippers, and the Company got another extension. These questions

Opposition
revived in 1808.

and the wider question of "Government," came up more forcefully fifteen years later. The term of the extension was to expire in April, 1814, but the agitation began in 1808. Involved with these questions, was also the abstract question of the propriety of a Company possessing political or territorial rights, as the privileges of the East India Company in fact meant. Earl Grenville demanded that the Crown should definitely take over the political and territorial rights of the Company, and he argued with great force that "no Sovereign ever traded for a profit; no trading company ever yet administered Government for the happiness of its subjects." The Directors

¹ It was not without considerable difficulty that Lord Cornwallis succeeded in inducing the Court of Directors to abandon their previous vicious policy of "small nominal salaries with large commissions on collections." "I have every reason to believe," he said (see Beveridge—Comprehensive History, Vol. III, p. 575), "that at present almost all the Collectors are, under the name of some relation or friend, deeply engaged in commerce, and by their influence as Collectors and Judges of *Adalat*, become the most dangerous enemies to the Company's interest." On his advice, the system of commissions was stopped, and generous salaries were provided in stead. From this time the covenanted service of the Company assumed a new aspect, and gradually established a high morale.

² These were then Liverpool, Bristol, Glasgow, Manchester, Norwich, Paisley and Exeter.



stubbornly resisted, and eventually on their agreeing to throw open the trade in India to other English companies and merchants, except the monopoly of their trade in China, and an annual provision of £10,000 for education,¹ the Directors managed to secure another extension.

47. The vigour of opposition in the earlier period seems to have abated considerably when this term was about to expire. The Ministers were not also very anxious to take over the administration of India, but the objections to the commercial character of the Company, while they were also in charge of the Government, could no longer be ignored. By the Charter Act of 1833 (3 & 4 Wm. IV, Cap. 85) the Company were allowed to retain the Government of the British territories for another twenty years, but divested entirely of their commercial occupations. Section 4 of the Act required them forthwith "to make a sale of their merchandise, stores and effects at home and abroad, distinguishing in their account books as commercial assets," and to close their commercial business with all convenient speed. They were permitted to retain their trade in China, but only on level terms with other traders. In consideration of all these, a dividend of ten and half per centum per annum was assured to the stock-holders of the Company, as a charge on the revenues of India under certain conditions of redemption and provision of a Security Fund (see paragraph 19 of Chapter XIII, *post*): but had the plan been reversed *i.e.*, had the Company been divested of their functions of Government and allowed to have their trade in common with other traders, India would

¹ This fund was badly administered, and little was done for many years. But it showed the beginning of a different outlook about the administration.

have probably been saved of this annual charge, while, what was more important, there would have been an advance in the methods of administration, by twenty-five years.

The Act provided for a Governor-General with a Council of four ordinary members as constituting the Government of India, and for a Governor with three Councillors for each of the Presidencies of Bengal, Madras and Bombay, and the proposed Presidency of Agra. The Governor-General in Council was to be the Supreme Government with power to legislate for the whole or any part of the British territories in India, and was given full financial control over the administration in the Presidencies. The outlook of the Government was also changed. The Governor-General's Council when sitting for legislation,¹ was to have one member who was not a servant of the Company; and the principle of larger employment of the natives of the country in public service was definitely recognised. The Act laid down that "no native of India, nor any natural-born subject of His Majesty, should be disabled from holding any place, office or employment, by reason of his religion, place of birth, descent or colour."² The patronage of appointments in the covenanted civil service by nomination, was gradually taken away, and ultimately the Charter Act of 1853 threw all such appointments open to competitive examination. The conditions after 1833,³ thus only paved the way to final assumption of direct

Direct control
by the Crown in
1858.

¹ Laws passed henceforth were "Acts" and not mere "Regulations."

² The Statutory civil service, from which the present arrangement of "Listed Posts" has evolved, was not, however, founded till 1879.

³ From then the Company were in the uncomfortable position of "mortgagees in possession," as Lord Ellenborough curtly put it; yet with little power of "user," and thus "undignified" and "not very popular." Real power had passed to the Board of Control, or rather the President of that Board, the predecessor of the present day Secretary of State for India. See Chapter XIII.

control by the Crown in 1858. Thereafter a new chapter opened, with a broader outlook and a truer realisation of the responsibilities of Government. But at the start it was faced with many grave problems, long neglected : and above all burthened with a " debt " of about 70 million pounds.

48. For Bengal, a large part of the period was a period of experiments in government. Her people quietly submitted to the ordeals of these experiments and constantly changing methods : while other Provinces profitted from the results. Bengal was made to yield a revenue which the Company did not need, or could not spend, for her people ; and the large surpluses which accumulated were drafted to meet the deficits of Madras and Bombay, and help in the annexation of other territories and consolidation of the British Empire in India. Bengal was never credited with the advances¹ she thus made ; but on the contrary, by irony of circumstances, she had to share what is called " India's debt."

Bengal not credited with the advances made from her revenues during the Regulation period.

¹ While Bengal was never credited with the advances she made in the earlier years, and there was no attempt to adjust when some of the other Provinces showed local surpluses, the policy of making Bengal pay for the deficits of other Provinces and for the Central Government, continued long afterwards. The inequity of this policy was vigorously exposed by the Government of Bengal in 1869, when the Imperial Government refused to bear the cost of primary education from the ordinary revenues. The aggregate expenditure in Bengal (as then constituted) during the six years 1861 to 1867, was £13,061,600, while the receipts (even exclusive of land-revenue, customs and opium) amounted to £19,302,467. If land-revenue were added the total receipt was at least 37 million.

Whatever may be said for the period after 1835, when a Central Government with a Governor-General of India, was constituted, the several Provinces in the earlier period were separate and distinct.

CHAPTER II

ADMINISTRATION OF CRIMINAL JUSTICE

Under the Mughal administration, the provincial Subahdar was the vice-gerent of the Emperor, and as such he was not only the chief of the Army (Sepah-sillar), but he was also the head of the tribunals of criminal justice in his province. The following extracts from *Ayeen-i-Akbari*, give a fair idea of the conceptions of the vice-gerent's duties in this respect :—

“ The prosperity of the subjects depends upon his impartial distribution of justice.”

“ The disobedient (*i.e.*, offenders) he shall strive to reclaim by good advice. If that fails let him punish with reprimands, threats, imprisonments, stripes, amputation of limbs ; but he shall not take away life till after the most mature deliberation.”

“ In judicial administration let him not be satisfied with witnesses and oaths, but make repeated and various enquiries, and pay due attention to physiognomy. He must not entrust these investigations so entirely to another, as to consider himself freed from all responsibility therein.”¹

“ Let him shut his eyes against offences and accept the penitent.”

“ Let him appoint to (judicial) offices, men of worth, foresight and integrity, and not such as are avaricious.”

¹ In explaining the futility of mere references to departmental officers, the following is written in verse :—“ Refer not his cause to the investigation of the *dewan* : for possibly his complaint is against the *dewan*.”



“ Let him object to no one on account of his religion or sect.”

“ Let him not be hurried away by representations of slanderers, but exert his own circumspection on all occasions, because men of bad character forge stories.”

“ Let him not be revengeful : but behave with modesty and kindness to every one.”

These were good precepts suited to the “ patriarchal ” form of government which had been the established form in earlier days,¹ and which the Muhammadan rulers also

How evils crept in with the decline of the Mughal power.

maintained in the monarchical form which they established. It is probable that these precepts were fairly well-respected during the best period of the Mughal rule; but in the disorder which followed the break-down and rapid decline of the Great Empire, the provinces which suffered most were those which, like Bengal, were situated at a distance from the capital of Delhi and where there were other disruptive elements at work. Ghulam Hossain,² the author of *Seir Mutaquerin*, writing in 1780 (1194 A.H.), pitifully lamented how “ evils crept in ” from the reign of Aurangzeb, and widespread abuse and usurpation of judicial powers became the canker of the province.

2. The *Ayeen-i-Akbari* gives an outline of the system of administration of criminal justice at the time. The actual administration of criminal justice was in the hands of the *Kazi*³ and an official called “ Meer Adul ” or more correctly

Tribunals for criminal justice in *Ayeen-i-Akbari*.

¹ Thus wrote Ghulam Hossain Khan, years later, in his *Seir Mutaquerin* :—
“ The (Indian) Princes lived amongst their people, and amongst their nobles, as kind and condescending parents amongst their children.”

² He was a nobleman of high rank, and “wrote both as an actor and spectator.”

³ Abul Fazl explains this delegation of authority by the vice-gerent, thus :—
“ Although it be the duty of the monarch (or his Viceroy) to receive complaints and administer justice, yet seeing that it is not possible for one person to do every-thing it necessarily follows that he must delegate his power to another.”

Mir-i-Adl.¹ The *Kazi* tried the case, and *Meer Adul* passed sentence and ordered punishment. The procedure of the *Kazi* is described thus :—"He shall begin with asking the circumstances of the case, and then try it in all its parts. He must examine the witnesses separately upon the same point, and write down their respective evidences. Since these objects can only be effectively obtained by deliberations, intelligence, and deep reflection, they will sometimes require that the cause should be tried again from the beginning, and from the similarity or disagreement, he may be enabled to arrive at the truth."

But at the same time, the same general sentiments about the danger of implicit reliance on the testimony of witness, are repeated :—"Considering the depravity of human nature, he ought not to place much reliance on depositions and solemn asseverations. Divesting himself of partiality and avarice, let him distinguish the oppressed from the oppressor, and when he has discovered the truth, act accordingly."

3. Abul Fazl was describing the general system introduced by Akbar, in the provinces round and close to the capital at Delhi ; but in the distant *Subahs*, as Bengal, the methods of administration had to be adapted, more or less, to the existing conditions. Abul Fazl wrote between 1582 to 1603 A.D., but Bengal was not fully conquered by the Mughals till about 1636 A.D. In the meantime the situation which they had to face, was a continuous fighting with a number of militant chiefs or *rajas* (already

Conditions in
Bengal when Abul
Fazl wrote.

¹ Wahed Husain in his "Administration of Justice during the Muslim Rule in India," writes that "Akbar appointed *Mir-i-Adl* as the officer responsible for civil administration, corresponding to *Munsif-i-Munsifan* of Sher-Shah. But Abul Fazl writes—"The *Kazi* tries the cause : and the person who passes sentence and orders punishment, is called the *Meer Adul*"—and this obviously refers to criminal trials. Every Province had not, however, a *Meer-i-Adl* : and in Bengal there was no official by this name.



called by the Pathans, zemindars) who held very considerable power within their respective territories.¹ They maintained armies, though of a crude type, and had fortresses of their own. Considerable powers lay in their hands in the matter of maintenance of order, and also in the administration of justice, particularly in criminal matters.

4. We get no account of any office of the name of *Meer Adul* in Bengal²: but there can be little doubt that the system outlined by Adul Fazl, and the principles of criminal

Scheme in *Ayzen-i-Akbari* how far applied in Bengal.

justice enunciated in his book, were applied to Bengal during the best period of Mughal rule, though perhaps modified in nomen-

clature and in minor details. Ghulam Hossain Khan in his *Seir Mutaquerin*, while lamenting the evils, misrule and disorder which followed the break-down of the Great Mughal from the latter part of Aurangzeb's reign, states that originally the *Kazi* was an independent official and received "a salary from the treasury, and such a *jaigir*

Kazi in *Seir Mutaquerin*.

besides, from the Emperor's liberality as afforded amply to all his wants, he did not

dare to take any fee, any bribe, from any one." He was thus free "to put in force the ordinances of the law, without partiality or pity, in every matter and against any

Disorganisation with the decline of the Mughal power.

person whose case would require his animadversion." But with the demoralisation which followed the decline of the

Mughal empire, the office of the *Kazi* was "leased out and under-leased," and administration of

¹ They were subdued: but as soon as they saw signs of decline of the Mughal power, they were ready to revolt, as Sitaram Rai did in the early part of the next century. When the English came land-holders, though crippled by the Mughal policy of disintegration, played an important rôle in the political intrigues of the time.

² Wahed Husain describes the system in the Subahs during Akbar's time, thus:—*Subahdar* or *Nazim* at the head: the *Quazi-ul-Quazul* (the Chief Quazi): then the *Kazi* (or Quazi): and under him *Naib Kazis*. These functionaries worked

justice fell in the hands of faithless persons. It is not clear what exactly the author was referring to ; but one thing appears from later accounts, that the control of criminal justice in places away from the capital city, had passed almost completely into the hands of the bigger zemindars. Mr. Justice Field writes (1876), that when the English came, the administration of justice by the establishment of the *Nazim* and his Deputy, was confined practically to Murshidabad and its environments. If there were *Kazis* in the interior, their powers had been crippled : and a large volume of judicial functions, whether exercised for good or for evil, lapsed into the hands of the zemindars and other persons of local influence. The bigger zemindars or the *rajas*, who were the natural territorial chiefs from

before the time of the Muhammadans,
easily came into the vacant places. The
process was easy, because under the Mughal
constitution the entire Police of the interior were maintained
by the zemindars out of the lands and profits of their
estates, and the responsibilities of maintenance of peace
rested in them.¹ We get the following description of the
system of administration of criminal justice at the time
the Company acquired the Deawny, from the Sixth Report
of the Committee of Secrecy, 1773 :—

“The criminal court in every district, was generally known by the name of *Faujdary* : the zemindar or *rāja*

in the cities ; and in the villages the local zemindar and the jaigirdar looked after the welfare and general affairs of the village, the centres of activities being the zemindar's *kachari* or the Jaigirdar's *jilawkhana* or the *chabutra* or *chauk* of the headman of the village.

¹ Grant writes that this was always stipulated in *zemindari sanads*. It is, however, hardly correct that in Bengal this responsibility extended to the length of zemindar being liable to make good the value of the stolen property when a theft or robbery was not detected. This notion arose from a confusion with what prevailed in the semi-subdued tracts in Chota Nagpur and its borders where the aboriginal inhabitants maintained their own customs of *ghatwals*, *tikaits* and *thakurs*,

of the district, was the judge in this court : his jurisdiction extended to all criminal cases, but * *

* in such as were of a capital nature, the sentence was not executed until a report was made to the Government at Murshidabad, and orders received upon it. The proceedings in the court were summary, the most frequent mode of punishment, particularly when the man accused was a man of wealth, was by fine, and every fine imposed by the authority of the court, was a perquisite¹ of the zemindar himself, by virtue of the tenure of his land."

The last clause is hardly correct,² and shows a confusion between the zemindar's responsibilities regarding Police, and the assumption of judicial functions acquiesced in by the disorganised Mughal administration in its later days.

5. Burdwan, Midnapore and Chittagong had come under the authority of the Company earlier than the Dewany. An assignment of the revenues of Burdwan was obtained as early as 1758, but the Company's officers met with stern resistance. Earlier, in 1755, the Raja had closed all the Company's factories within his district : and while —Burdwan : at this time the Maharatta raids in this area became intensive, the renewal of the assignment by Mir Kasim in 1760, did not produce immediate truce,

¹ These self-constituted tribunals had to be self-supporting. But the total appropriation of *finer* undoubtedly left a good margin as private gain. In civil cases as well as in criminal cases when the property was recovered, a practice of levying a *chauth* or one-fourth, to which reference is made in the official records, seems to have developed.

Apart from fines, corporal inflictions, social outcasting and public humiliation were other forms of punishment resorted to by the zemindars.

² From what the Company's officers actually found, such an impression was not unnatural. In fact, apart from their altered position at Calcutta on the re-entry into the city by Clive after his victory at Plassey, one argument put forward in justification of the judicial tribunals which functioned here, was that it was in accordance with the zemindari custom that the Company as zemindar of the three villages acted as magistrate of police and held courts : Firminger, Vol. I, p. xix.

except for the payment of the revenue ; and when Verelst went there as President on behalf of the Company, he found that the Raja had his own courts for civil and criminal justice.¹ Even during the supervision of the English Residents, the sentences might be approved by the Raja instead of the Nawab. More or less similar was the state of things in the territory of the Rajas of Bishnupur and Birbhum.

Midnapur was in a state of much greater disorder.

—Midnapur : When ceded to the English, only a portion —Midnapur and Jellasore—was under some control.² The Western tract, Bogri and the Jungle Mahals were in the hands of a number of jungle chiefs,³ managing their own affairs in their own way.

Chittagong had a much chequered history. This part of the country had been seized by the kings of Arracan during the struggle between the Mughal power and the Pathans : and even up to the time of Shaista Khan (1666) it was in an unsubdued state. Not long after, the Mughal power itself began to decline. So it was that when Harry Verelst was sent out in December, 1760 as the first Chief of Chittagong, he was invested with the superintendence of the *Faujdari* jurisdiction ; but judgments had to be submitted to the *Naib Nazim* for confirmation.

6. Calcutta, as we have seen in the last Chapter (Introduction), had a different history. Long before the Dewany, the Company had established tribunals, both for civil and criminal justice, primarily amongst Europeans, but also including such “ natives ” as subjected themselves to their jurisdiction. The law applied was not the

Criminal administration in Calcutta :

¹ Verelst—“ Views, etc.”, App. pp. 219, etc.

² Hijli and Tamruk did not come under control till after the Dewany of 1765.

³ There is reference to them even in the later Regulations.

Muhammadan law, but the criminal law of England and its elaborate procedure. The Charter of 1726¹ gave "the President and five members of his council, a power to be and act as Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery, to hold Quarter Sessions and to proceed to hear, try and punish, in all criminal causes, except only for High Treason, as Commissioners of Oyer and Terminer and Gaol Delivery do in England, appointing and summoning Grand and Petty Jury's for those purposes."² Rev. Long's Selections show that about the year 1748 serious crimes such as "horrid murder" had become frequent and the Directors had to issue special instructions. As to whether instructions were also issued regarding punishments in less serious crimes, there is no clear record³; but the catalogue of cases tried between 1762 to 1768 given by Firminger⁴ shows that the punishments awarded were sometimes shockingly severe. Burglary and felony were punished with death,⁵ while a common mode

—English law and procedure applied :

—Severity of punishments.

¹ The constitutional propriety of the assumption of such power on the strength of a Charter from the British King was questionable : see last Chapter (Introduction). The Company were only zemindars : but the argument put forth, though much later on, was that even as such, the English zemindar of the three towns could act as magistrate of Police and hold courts for petty offences and revenue disputes in accordance with the zemindari customs which had developed in Bengal : Firminger, Vol. I, p. lxx.

² Court of Director's letter of 17th February, 1727 : for guidance, Walpole's book on Administration of Criminal Justice was sent.

³ Impey, during his impeachment, made reference in his defence, to certain instructions by the Court of Directors, regarding the nature of punishment to be inflicted on native offenders.

⁴ Fifth Report, Vol. I, p. xi.

⁵ In felonies of less serious nature, the usual punishments were—"flogging at the Cart's Tail with a cat of nine tails," "whipping at the public market places," and "commitment to gaol with hard labour." Nand Kumar was hanged for "forgery" by the Supreme Court much later (1775), but there was a political aspect in it : otherwise punishment for "forgery" was whipping round the town at the Cart's Tail (Accused—Fras. Russell). Radha Charan Mitra was also

of incarceration was publicly flogging at the Cart's Tail, repeated on specified days in the week. There was no mutilation of limbs or compromise with "price of blood" (*kissa*) in cases of murder as was permitted under the Muhammadan law. While mutilation of limbs as a punishment appeared shocking to the English legislator, a capital sentence on a person who had cut off a woman's nose for infidelity, was equally shocking to the natives of the city. Views of men like Verelst were that the English criminal law of the 18th century was a "monument of perfection": but if this law permitted death sentences for offences of thefts or forgery or hurt, it is not, as observed by Firminger, "an amiable subject for contemplation."

7. But passing back to the conditions in the interior of the country outside Calcutta, we have seen how great disorder prevailed at the time the English Company acquired the Dewany. The Mughal structure of judicial administration had broken down: and the landholders and other persons of local influence, had, to a very large extent, usurped powers which were exercised irregularly and without any proper control by a superior authority. It was thus the most important branch of the administration which called for immediate attention. Unfortunately, for some years, the Directors of the Company did not feel that their function under the Dewany was any more than to collect the revenues¹ and maintain an armed force for suppressing revolts. Whatever may be said about this attitude as regards other branches of administration, so far as the branch of criminal justice was concerned, the hesitancy was justified. The terms of the *Farman* by which the Dewany was obtained, reserved

Effect of the Company's "stand-by" policy, on criminal administration.

sentenced to death for forgery (1769), but was eventually pardoned. Death was the penalty for murder and rape. Fine was the usual punishment for assault.

¹ See last Chapter (Introduction).

the *Nizamat*¹ for the Nawab at Murshidabad, and read as if the responsibilities regarding this department, except that the Company was required to provide the funds, rested with the Nawab. But the Nawab, circumstanced as he was, was not in a position to take up any scheme of re-organisation, nor had he the capacity.² On the other hand, the Company could not properly step in unless they ignored the Mughal power and asserted sovereign right. The result was that disorder grew more intense and widespread, and any one, not excluding the officers and servants of the Company, who had power, used it in his own way. The outrages of gangs posing as *Sanyasis* and *Fakirs*, which had commenced earlier, became more extensive.³ The confusion was at its worst when the terrible famine of 1769-70, swept away a third of the population and brought untold miseries to thousands of families. The plan of land-settlement by auction which introduced "farmers" who had no other concern but to collect rent, completed the disintegration of whatever tribunals the zemindars had constituted themselves to be.

¹ The term "Nizamat" is from Arabic "Nizam" which means literally an arranger or administrator. As used in contradistinction from "Dewany," it meant the department of criminal justice. But it is doubtful if there was any sharp distinction between the two departments when both were in the hands of the same person, the *Subahdar*. There might have been separate *daftars* at the capital, but in the interior the two functions were mixed up.

² Under the agreement with the Nazim dated the 30th September, 1765, the amount to be paid by the Company for the *Nizamat* expenses was fixed at Rs. 36,02,277 apart from the payment for his household expenses. This was a pretty large sum to inaugurate a reform in those days. The amount was reduced to Rs. 24,07,277 in 1766, and in 1770, on the death of Syef-ud-Daulah, further reduced to Rs. 16 lakhs. The new Nawab, Mobarak-ud-Daulah, was, however, a minor : and in 1771, under the orders of the Court of Directors, payment on account of the *Nizamat* (apart from household) was practically stopped. The total allotted was Rs. 16 lakhs, but as the house-hold allowance itself was Rs. 15,81,991 in 1770, this meant a trifling margin for any administrative arrangement.

³ For a fuller account of *sanyasi* raiders, see Rai Jamini Mohan Ghosh Bahadur's "Sanyasis and Fakirs of Bengal" published by the Bengal Secretariat in 1930. These gangs were even hired by persons seeking political power, e.g., Rudra Narayan after the assassination of the infant Maharaja of Cooch Behar, in 1766.

8. Warren Hastings's first scheme of re-formation of

Warren Hastings's scheme of 1772 for re-establishment of the Mughal system—but under the Company's supervision :

the judiciary was not as thorough on the criminal side as on the civil. What he aimed at was re-establishment of the Mughal system of *Kazis* and *Muftis*,¹ but under better organization. He did not consider it politic yet to ignore the Nawab altogether, and the revisional powers as well as the power of final orders in capital cases, were retained with the Nawab, as the *Nazim* or head of the *Nizamat*. The control he devised was that the European Collectors in the districts would supervise the local courts of *Kazis*, see that the proceedings were regular and that there was no partiality. Similarly, the revisional *Nizamat Adalat* of the *Nazim* was under the supervision of the President and Council.

The local courts were stationed at the head-quarters of each district. They were called *Faujdari Adalat*, and exercised jurisdiction over all cases of murder, assaults, frays, quarrels, adultery and breaches of the peace. The *Kazi* or *Mufti* of the district and two *maulvis* sat to expound the law and determine how far the delinquents were guilty. But the Collector was also required to attend the proceedings, and to see that the trial was in open court, that all necessary witnesses were examined and that the decisions passed were fair and impartial.

—the *Muffasil Faujdari Adalat*.

The *Nazim's* court at the capital was called “the *Nizamat Adalat*.” The Regulation laid down :—“A chief officer of Justice, appointed on part of the *Nazim*, shall preside in the *Nizamat Adalat*, by the title of *Daroga Adalat*, assisted by the Chief *Kazi*, the Chief *Mufti*, and four

—the *Sadar Nizamat Adalat*.

¹ The *Mufti* was a “learned jurist” : he expounded the law to the *Kazi* who was the Judge. The *Mufti* did not represent any party, but was a State officer required to give the correct version of law without advocacy to any party

capable *maulvis*; their duty shall be to revise all the proceedings of the *Faujdari Adalat*, and in capital cases by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the *Nazim*, which shall be returned into the *muffassil*, and there carried into execution; that with respect to the proceedings of this court, a similar control shall be lodged in the Chief and Council, as is vested in the Collector of the districts, so that the Company's administration in the character of the King's Dewan, may be satisfied that the decrees of justice, on which both the welfare and safety of the country so materially depend, are not injured, or prevented, by the effects of partiality and corruption."

9. The Regulation of 1772 make mention of *faujdari bazi jama*—a species of fine in criminal cases which constituted the perquisites for the *Kazis* and *Muftis*, where they still functioned. This was characterised as "detestable and obnoxious": and the plan adopted in these Regulations was that the *Kazis* and the *Muftis* would be paid monthly salaries.¹ The *Kazis* and *Muftis* were to be appointed by *parwanas* sanctioned by the Governor-General in Council on the recommendation of the *Darogah of the Sadar Nizamat Adalat*, the *Kazi-ul-Kazaat* (the chief *Kazi*) and the chief *Mufti*.

10. But from the start, difficulties arose from the application of Muhammadan jurisprudence, not only in the matter of procedure which permitted outside "impressions" apart from the recorded evidence, but particularly in punishments which on the one hand might be cruel

(*cp.*, Law officers during the Company's administration). If the *Kazi* differed from the *Mufti*, the constitutional method was to refer to the *Nazim*.

¹ These salaries, however, formed a very trifling portion of the resumption of the amount payable to the Nawab-Nazim on this account. That amount was Rs. 36 lakhs.

inflictions as mutilation of limbs, might on the other-hand even in a case of murder, be only a fine to be paid to the heirs of the person murdered as *deut* or "price of blood," while the law of pardon on penitence was also liberal. The punishment of "outcasting" and other methods of social ignominy, was in vogue amongst the Gentoos or Hindus :¹ while "slavery" tolerated as only "mild domestic subordination," was also repugnant to British notions.² The punishment by mutilation of limbs, and compromise by fine or mulct, were stopped, but the law of *kissa* and *deut*, and the classification of murder (*kutl*) according to the manner³ by which death was actually caused, continued to be a vexed question for many years, as we shall see later on.

11. The scheme of 1772 did not work long. It fell through when, under the orders of the Directors, European Collectors were withdrawn from the districts in 1774, and in their place "native" *Diwans* or *Aumils* were left to superintend revenue and civil affairs, under the control of the five Provincial (or Divisional) Councils which were established with head-quarters at Murshidabad, Burdwan, Dinajpur, Dacca and Patna. For the administration of criminal justice, a new plan of *Faujdars* was adopted. The *Faujdars* were European officers stationed at fourteen

Scheme of *Fauj-dars*, 1774.

¹ More extensively when the landlords and other persons of local influence assumed judicial functions.

² Slavery to the extent of a very profitable trade in "slaves," as if they were sheep and goat, prevailed in the Western countries in the worst form. A repugnance came with the Quaker movement in about 1727. Later, Wilberforce, Burke, Fox, Granville and Pitt, strengthened by the decision of the English Judges in 1772, in the famous case of negro Somerset, took up the cause : but an Act penalising slave trade was not passed till March, 1807, and finally "slavery" was abolished throughout the British Empire by an Act passed in 1833.

³ A curious story is told of a case in which a man in order to rob the ornaments of a girl, forcibly put her head under water and kept it so till she was dead. There was no blood-shed, and therefore the "murder" was not of the heinous type !



different places in the Province, and in their adjudications they were assisted by the *Kazi* and the *Mufti*. It was not mere supervision like that of the Collectors previously, but the *Faujdar* was the presiding and responsible officer, holding the court and acting also as Magistrate of the peace.

12. The status of the *Sadar Nizamat Adalat* also underwent some change. In November, 1773, this *Adalat* was removed from Murshidabad to Calcutta, and with the consent of the Begum (the Nawab being a minor) Sadr-ul-Huq Khan, then *Daroga* of the *Adalat*, was empowered to affix the seal and signature of the *Nazim* (the Nawab), on his behalf. The actual decision, however, rested in the hands of the Governor-General and the Council, acting through what was termed the "Council Board."

The *Sadar Nizamat Adalat* under the new scheme.

13. While Warren Hastings was thus organising a system of judiciary for the administration of criminal justice amongst the natives of the country, the British Parliament was seeking to establish a King's court at Fort William to which all European British subjects, including the officers of the Company, were to be amenable. A Supreme Court of Judicature, with Judges appointed by the King, was accordingly established at Calcutta under the Regulating Act of 1773. There was for sometime a bitter controversy regarding the jurisdiction of this court. The Judges of

European British subjects, and the Supreme Court established in 1773.

How the Supreme Court sought to apply its powers to the officers of the Company :

the Supreme Court took the view that the official acts of the Company's servants, when challenged by any aggrieved party, were subject to their scrutiny through the regular process of the court, and even asserted that this was their particular function so that the corrupt practices and high-handed activities of the Company's men about

which there had been serious allegations in England, might be put under restraint. This attitude was bitterly demurred by the officers of the Company. The language of section 33 of the Regulating Act (13 Geo. III, C. 63) was, however, clear and definitely in favour of the view taken by the Supreme Court. This section, which related to charges of corruption, ran as follows :—

“ If any of His Majesty’s subjects in India, employed by, or in the actual service of, the United Company, shall be charged with, and prosecuted for any breach of public trust, or for embezzlement of public money, or stores, or for defrauding the United Company, every such offender, being convicted thereof in the Supreme Court of Judicature, may be fined and imprisoned, and judged to be for ever after incapable of serving the United Company.”

For other kinds of charges of a criminal nature against a European British subject, the position was also that there was no other competent tribunal but the Supreme

—and even
ignored the judicial
status of the Com-
pany’s Courts :

Court at Calcutta. The Judges of the Supreme Court, however, refused to recognise the Courts established by the Company’s Regulations, or the orders and decrees of such courts as judicial decisions. Herein they were hardly right, for although the Regulating Act did not expressly mention these courts, it recognised the authority of the Governor-General and Council to promulgate Regulations and ordinances for the good government of the country. This attitude of the Judges of the Supreme Court affected mainly the revenue-claims made by the Collectors and others on behalf of the Company ; but in those days a criminal prosecution from a finding of false claim in a civil case, was an easy step.

The position was clarified to a certain extent by the Regulating Act of 1781 (21 Geo. III, C. 70), by which the courts established by the Company’s Regulations were

expressly recognised ; but the controversy was not really set at rest till the further Act of 1793 (33 Geo. III, C. 52) and the several Regulations passed by Lord Cornwallis relating to judicial remedies against the official acts of the Company's European servants, whether amounting to a mere civil liability, or graver charges of corruption or other criminal misdemeanour. It was thus that two distinct tribunals worked side by side throughout the Company's period, till the Supreme Court merged in the High Court established in 1862. During this period the Supreme Court exercised jurisdiction in the city of Calcutta, and also over all European British subjects, including the Officers of the Company, and administered the law and procedure as in England. The Regulations passed by the Company's Government, applied only to the natives of the country ;¹ but as we shall see later on some of the Regulations assumed also power to punish European British subjects for misdemeanour in connection with their official duties. Otherwise also, Zilla and City Judges were generally given commissions of Justice of the Peace "under the seal of the Supreme Court",² and in this capacity they could apprehend European offenders and then send them up for trial by the Supreme Court at Calcutta. See paragraph 25 *post*.

14. However, the tribunals established by the Regulations had full jurisdiction over the natives of the country, though subject to a nominal control by the *Nazim*. Lord Cornwallis completely eliminated this sham control, and under the Regulations promulgated in 1790, the *Nawab* or the *Naib Nazim* ceased to have

Lord Cornwallis
eliminates the
Nawab from the
Nizamut Adalat :

¹ Europeans who were not British subjects, were also amenable to the Regulations : and this was made clear by Reg. VI of 1803.

² The Supreme Court had this power to issue commissions, under 33 Geo III Cap. 52 : and Regulation II of 1796 laid down the procedure.

any concern in the administration of criminal justice; complete power was assumed by the Governor-General, and he and the members of his Council constituted the final *Nizamat Adalats*, functioning quite independently of the Nawab. The payment of the originally stipulated sum of Rs. 36 lakhs to the Nawab for the *Nizamat* establish-

ment had already been stopped in 1771, and this step of Lord Cornwallis wiped out the last vestige of the *Farman* of 1765, that

—its import :
complete sovereign
right.

the administration by the Company was under any authority from the Mughal at Delhi. It was in effect complete assertion of Sovereign-right on behalf of the British nation. The constitution of the *Nizamat Adalat*, called also the *Sadar Nizamat Adalat* was embodied later in Regulation IX of 1793.

The most noticeable feature of this *Adalat*, was that it

Executive
Government and
the *Nizamat Adalat*
united in the same
body.

was comprised of the same persons who formed the executive Government as well.

The objection to this, which was obvious, was overlooked, perhaps because under the native system, the Nawab himself,

in his *Nizamat Adalat*, constituted the final court of criminal justice; or perhaps the authorities were not sure that a separate final tribunal might not create the same kind

of trouble which they had with the Supreme

Change by Lord
Wellesley.

Court. Eight years later Lord Wellesley boldly put forward the anomaly of the

position that the Governor-General in Council, exercising supreme legislative and executive authority, should also administer the judicial functions of Government, observing that it was "essential to the impartial, prompt and efficient administration of justice, and to the permanent security of the persons and properties of the native inhabitants of the provinces," that the judicial administration "should be distinct from the legislative and executive authority."¹

¹ Preamble to Regulation II of 1801.



15. Regulation IX of 1793, elaborated the constitution of the subordinate criminal courts and their functions.

Provincial Courts
of Circuit.

The four Provincial Courts of Appeal for civil justice, established for the four grand divisions with headquarters at Calcutta, Murshidabad, Dacca and Patna, constituted also the Courts of Circuit for the trial of the more serious criminal cases which were committed to them by the Magistrates of the districts.

16. In the districts, European Collectors were restored in 1781, and the original plan of Warren Hastings worked

Judge-Magistrate
in the district.

till a change of considerable importance was effected by Lord Cornwallis. Just after his arrival all administrative and judicial functions were united in the same officer, *viz.*, the Collector. This, however, was done only under the instructions of the Court of Directors which he brought with him when he came. But he soon convinced the Directors of the fallacies of the "one master" theory : and succeeded in establishing in 1790, a Judge in each district, separate from and independent of the Collector. This Judge was to be also the Magistrate with powers to try "petty offences such as abusive language, calumny, inconsiderable assaults and affrays," and punish with imprisonment not exceeding 15 days or fine up to Rs. 50/-. For other and more serious offences he would apprehend the offenders, and after a preliminary enquiry sifting the evidence, commit the offenders for trial by the Court of Circuit. These Regulations of 1790 were embodied in Regulation IX of 1793.

17. Lord Cornwallis's ideal of complete separation of judicial administration from the executive, so forcefully

Anomaly in the
Judge-Magistrate
being also the Head
of the Police.

avowed in Regulation II of 1793, was not, however, applied to criminal justice. The Judge, as Magistrate, was also the Head of the Police : and thus identified himself with

the executive authority for apprehension of offenders and maintenance of peace and tranquillity. The position in this respect did not change when later, in 1821, the magisterial functions of the Judge were transferred to the Collector. The Collector, as Magistrate, was then also the Head of the Police. Separate Superintendents of Police were not appointed till 1862.

18. One obvious flaw in this scheme of criminal tribunals, was its inadequacy. There was only one person

Inadequacy of
the criminal trib-
unals :

for receiving complaints and giving redress in the vast area of a district, the average size of which was as much as the largest district (Mymensingh) in the Province to-day. He was both Judge for civil justice and Magistrate for criminal matters. The result of this was that the peasant class and the poorer people in the villages continued to look up to the zemindar¹ for redress and only those in the towns and others who were particularly litigious² resorted to the constituted Courts at the district head-quarters. We shall see in Chapter IV, that in civil matters, an inferior agency of Native Commissioners was constituted, and selected zemindars and their employees were vested with the powers of a *Munsif* to receive, try and decide suits amongst their tenantry, within certain monetary limits. The objection to recognise judicial authority in the zemindars in criminal matters, was obvious, and perfectly sound³; but what was overlooked was that in the absence

its evil effect.

¹ This persisted even down to much later period. See Major J. C. Jack's Bakerganj Settlement Report, under zemindary *abwabs*.

² Hence perhaps the calumny that the litigants in Bengal were marked by their "perseverance" in pursuing their cases to the utmost point. It was overlooked that by far the bulk of the disputes were settled in the villages either through the zemindar or through a local *Panchayet* of influential persons. Actions for torts, so common in European countries, are still unknown in India.

³ The vesting of zemindars with powers of *Munsif*, was equally objectionable; but there were other purposes which operated.



of some other constituted independent agency, the zemindars would nevertheless continue to exercise such authority, though in an unrecognised manner, and the people in the villages, whether for good or evil, would from their circumstance, resort to them for summary relief.

19. The first move to entrust natives of the country with trials of criminal cases, was taken by Lord Hastings. Regulation III of 1821 passed during his administration permitted the Zilla and City Judges, acting as Magistrates, to refer petty offences for trial, to the Hindu and Muhammadan Law Officer and to *Sadar Ameens*. But the plan was short-lived, for very soon after, the magisterial functions of the Judge were, as we shall see later on, transferred to the Collector. Native officers came to be entrusted with magisterial functions really in 1843. It was in pursuance of the policy of "more extensive employment of uncovenanted agency" of native officers, inaugurated by Lord William Bentinck, that by Act XV of 1843 passed during the administration of Lord Ellenborough, Deputy Collectors were vested with the powers of magistrate, and have since been called also Deputy Magistrates.

It is difficult to explain the jealous care with which judicial functions in criminal matters was sought to be reserved to European officers, from the beginning; and no attempt was made to constitute even an inferior agency of native officers. It cannot be said that it was due to mistrust; for had it been so the *Kazis*, the *Muftis* and the native Law Officers to whom so much importance is given in the Regulations would not have found any place: nor would there have been native Commissioners and *Munsifs* on the civil side. Mr. Fitzjames Stephen

A subordinate native magistracy not formed till 1843.

Possible reasons for this exclusion of natives, discussed.

says in one place¹—"The exercise of criminal jurisdiction is, both in theory and in fact, the most distinctive and most easily and generally recognised mark of sovereign power. All the-world over, the man who can punish, is the ruler." This was true for the act of Lord Cornwallis when he assumed complete control of the criminal judiciary, independently of the Nawab; but it cannot be strained for an argument to explain the exclusion of natives from inferior magisterial functions under the authority of the superior Courts. Probably financial consideration was one reason,² but this is only a conjecture.

One remarkable feature in the early Regulations is the great caution with which the administration of criminal justice was treated. The powers given at first to the Zilla and City Judges were even less than what are given to a third-class magistrate of the present day. There was a desire to understand the Muhammadan criminal jurisprudence and a genuine endeavour to apply it consistently with British notions of justice. In any case, though inadequate, the tribunals established by Lord Cornwallis, were a great advance upon what existed at the time the Company assumed power. The constituted Courts, as observed by Mr. Justice Field, were concentrated at that time at Murshidabad and its surroundings; and Lord Cornwallis's plan had at least one tribunal at the head-quarters of each of the eighteen districts into which the country was then divided.

20. The pressure on the Courts of Circuit was heavy for two main reasons. *Firstly*—the jurisdiction of the Magistrate was limited to very petty cases³; and most cases had therefore to be committed to the session; and *secondly*—

Devices to relieve
pressure in the
Courts :

¹ Minutes on the Administration of Justice in British India, 1872.

² The Native Commissioners and Munsifs were self-supporting from the institution-fees received. An inferior judicial agency on the criminal side could not be so.

³ They had to proceed with considerable hesitancy: for the European officers were still unacquainted with the manners and customs of the country. Even in

there were only four Courts of Circuit in the entire Province, which had also to deal with civil cases. To relieve the

—single Judge to hold circuit court, 1794 :

pressure,¹ Regulation VII of 1794 permitted a single Judge to go round as Court of Circuit. Still there was long

detention of under-trial prisoners, and several Regulations in subsequent years sought to expedite gaol delivery in

—Assistants of the Magistrates, 1797 :

various ways. In the districts, the Registrars and other European Assistants to the Judges were permitted to be vested

with magisterial powers, when necessary (Regulations IV of 1796 and XIII of 1797).

It was, however, still apprehended that many cases passed unpunished, and crimes were on the increase. Dacoity and robbery by gangs became also a growing menace. In

Increase of crimes : enquiry by Lord Wellesley, 1801-02.

1801, Lord Wellesley sent out a number

of interrogatories to the Judge-Magistrates and the Courts of Circuit, and the replies received give interesting information about the condition of the time and the ideas of

1802, Judge Strachey mentioned this as an "impediment" even to a capable European Officer, which "proceeded chiefly from our very imperfect connexion with the natives, and our scanty knowledge, after all our study of their manners, customs and languages * * * We perhaps judge too much by rule—we imagine things to be improbable, because they have not before befallen to our experience. We constantly mistake extreme simplicity, for cunning * "

¹ An idea of the volume of work may be had from the following statistics of persons tried by the Murshidabad Court of Circuit (letter of 26th January, 1802, in reply to Lord Wellesley's interrogatories) :—

1793-94 ..	..	1674	1797-98 ..	2170
1794-95 ..	..	1593	1798-99 ..	2422
1795-96 ..	..	1885	1799-1800 ..	2023
1796-97 ..	..	1579	1800-1801 ..	2261

But to judge from these figures it has to be remembered that the jurisdiction comprised the districts of Murshidabad, Bhagalpore, Rajshahi, Purneah, Dinajpore, Rangpur and certain country adjoining Cooch Behar : and that all but petty cases came up to the Circuit Court.

the officers, some of whom were remarkably frank. One question raised was whether the zemindars could not be given commissions as Magistrates or Justices of the Peace, on the same lines as commissions were given to them on the civil side ; but there was no proposal for establishing a subordinate native service of magistrates independent of zemindars, for dealing with criminal cases in the interior. A much more serious question at the time was the growing menace of gang robbery. The reports of the Judges also elicited the urgent need of a code of punishments for the more serious offences, in which the Muhammadan law was insufficient or permitted wide disparity. The result was Regulation LIII of 1803. Slight extension of power and jurisdiction of the Magistrate was also provided for. This Regulation, though limited in its scope, may be said to be the first Penal Code under the British rule.

21. But a change of far-reaching effect, which completely reversed the plan of Lord Cornwallis, was introduced in Lord Hastings's time. This was the transfer of judicial functions in criminal matters, to the Collectors of districts. A Regulation passed in 1821 (Regulation IV of 1821), provided that such functions of the Zilla and City Judges might be transferred to the Collectors, as the Governor-General and Council considered expedient. In his capacity as Magistrate, the Collector was to be guided by the orders of the Courts of Criminal Judicature, and in his other capacities, by the Board of Revenue or the Board of Commissioners. The Regulation was permissive, but there was complete transference of magisterial functions in a few years. Thenceforth the Judge ceased to be " Judge-Magistrate," and the Collector came to be called " Magistrate-Collector."

The most important effect of this change was that the Collector became the principal Officer¹ in the district, for all public matters including criminal justice and the police : only matters of civil justice which concerned individuals, were left with the Judge.

22. The first period of Lord William Bentinck's administration, saw a further advance of this new policy. The Divisional Commissioners, appointed under Regulation I of 1829, primarily for administrative purposes and as " confidential advisers " to the Government, were empowered to act as Judges in criminal cases hitherto tried by the Judges of the Provincial Courts acting as Courts of Circuit. These Courts of Circuit were thus abolished. Altogether twenty such Commissioners were appointed, of whom nine² were for the districts which now comprise the Province of Bengal. The reasons stated in the Preamble to this Regulation were as follows :—

" The Provincial Courts of Appeal and Circuit as now constituted, partly from extent of country placed under their authority and partly from their having to discharge the duties of both civil and criminal tribunals, have in many cases failed to afford that prompt administration

¹ Hitherto the Judge was the principal Officer, and it is noteworthy that when Lord Wellesley issued his interrogatories about matters of grave administrative importance in 1801, he addressed the Zilla and City Judges, and not the Collectors.

² These 9 Commissionerships comprised :—

- (1) Malda (with Bhagalpur, Mohghyr and Purnea).
- (2) Dinajpore, Rajshahi and Bogra.
- (3) Murshidabad, Birbhum and Nadia.
- (4) Dacca, Dacca Jallapore, Tipperah and Mymensingh.
- (5) Chittagong and Noakhali.
- (6) Sherpore (with Sylhet).
- (7) Bakurgango, Jessore, Suburbs of Calcutta, 24-Parganas and Baraset.
- (8) Midnapore, Nugwa (Hidgelloe) with Cuttack, Ballasore and Khurda.
- (9) Burdwan, Jungle Mahals and Hooghly.

of justice which it is the duty of Government to secure to the people. The Gaol Deliveries have been in some cases delayed beyond the term prescribed by law.....”

Regulation II of the same year laid down that appeals lay to the Commissioner of Circuit from “any decision” passed by a Magistrate or Joint Magistrate : and Regulation VI enlarged at the same time the jurisdiction of the Magistrate with powers to punish a person convicted by him, with imprisonment up to two years.

23. This plan did not work long. It was soon felt that the Commissioners¹ should be relieved of judicial

—but the plan given up in 1831 : Zilla and City Judges to be Sessions Judges.

functions in criminal cases ; and cases which would be committed to a Commissioner in Circuit, might as well be committed to the Zilla and City Judge for trial. Regulation VII of 1831 thus declared that thenceforth the Zilla and City Judges were also to be Sessions Judges for such cases. The Commissioner’s powers were, however, not yet completely taken away, and as a transitory provision, it was laid down that the Zilla and City Judges would exercise this function instead of, *or in addition to*, the Commissioner of Circuit. Eventually the Commissioner’s functions in criminal cases ceased, and the system which we have till to-day, was established during the administration of Lord William Bentinck.

It was not, however, simply because it was considered necessary that the Commissioners should be relieved of judicial duties in criminal cases, that the plan of 1829 was thus changed. There was a wider policy of concentrating in the districts all original, and also

Concentration in the district—the basic idea of the new policy.

¹ The administrative activities of the Government rapidly expanded from the time of Lord William Bentinck. Matters relating to education, municipal and rural affairs, and generally the uplift of the people, were coming into prominence.



intermediate appellate trials. In pursuance of this policy the Provincial Courts for civil cases were also gradually abolished from 1833.¹

24. The final tribunal for criminal justice throughout the period of Company's administration, was the *Sadar Nizamat Adalat*. Its constitution at first was that it consisted of the Governor-General and the members of his Council, the Supreme Council (Regulation IX of 1793). The Governor-General himself was the President, and the Court thus consisted of the same body which formed the head of the executive branch of the Government. A separation of function was effected in 1801. Under Regulation II of this year, the *Sadar Nizamat Adalat* was to consist of three Judges, one of whom—the Chief Judge, to be a member of the Governor-General's Council (not the Governor-General or the Commander-in-Chief), and the other two, the puisne Judges, to be selected from the covenanted civil servants who were not members of this Council. Four years later, Regulation X of 1805 rescinded the provision of the Chief Judge being a member of the Governor-General's Council, and laid down that the Chief Judge thenceforth should be a selected member of the covenanted service, who was not a member of the Council. The object was complete dissociation of the members of the executive Government from judicial function in the *Nizamat Adalat*, and the reason, to quote from the Preamble, was that from "the nature of the relations subsisting between such Chief Judge as a member of the Supreme Executive branch of the Government" it was "exceptionable" that such a member should be the Chief Judge.²

Changes in the
Constitution of the
Sadar Nizamat
Adalat.

¹ Regulation XIII of 1833. See Chapter IV *post*.

² The Regulation did not, however, debar a member of the executive council when he was a covenanted civil servant, being also a Judge of the *Nizamat Adalat*; only he could not be the City Judge.

But this plan was very soon reversed, and Regulation XV of 1807 restored the earlier arrangement that the Chief Judge should be a member of the Governor-General's Council. In the Regulation passed four years later (Regulation XII of 1811) authorising the Governor-General in Council to appoint a Chief Judge and as many puisne Judges as might be necessary, the words "being a Member of the Supreme Council" as the qualification of the Chief Judge, were omitted. The qualifications necessary for a Judge of the *Nizamat Adalat* were laid down more explicitly in Regulation XXV of 1814, *viz.*, that he must have officiated for not less than three years as Judge of the Provincial Court of Appeal or Court of Circuit: or that he should previously have discharged judicial functions civil or criminal, for a period of not less than nine years. Regulation III of 1829 changed the official designation of the Judges, but there was no other change during the rest of the Company's period.¹

25. The criminal courts established by the Regulations of the Governor-General had, as already stated, no jurisdiction over European British subjects. The position in 1793 was that European British subjects were amenable to the Supreme Court alone, for acts which rendered them liable to a criminal prosecution, whether the offences were committed within Calcutta or outside. This meant that in their case the criminal law of England and the procedure followed in the Supreme Court, which was established by Parliamentary statute, were to apply and not the Regulations which governed the *Sadar Nizamat*

European British subjects not amenable to the courts established by the Regulations, but to the Supreme Court at Fort William:

¹ The *Sadar Nizamat Adalat* (with the *Sadar Dewany Adalat*) merged in the High Court established in 1862 under 24 and 25 Vict. Cap. 104 (section 8). The separate Supreme Court at Calcutta was also abolished at the same time.

Adalat and the Courts subordinate to it. Under 33 Geo. III, Cap. 52 (1793), the Supreme Court had authority to appoint persons as Justices of the Peace for the apprehension of offenders who were under the jurisdiction of that Court; and by a Resolution adopted on the 7th January, 1794, it was arranged that the Zilla and City Magistrates would be given commissions as Justices of the Peace, under the seal of the Supreme Court. This was followed by Regulation II of 1796 which laid down rules of procedure for the Magistrate when apprehending an offender who was a European British subject, and transmitting him for trial by the Supreme Court. Regulation VI of 1803 while repeating that "European British subjects, for all acts of a criminal nature, were amenable only to the Supreme Court of Judicature at Fort William," explained further that "all Europeans, not British subjects, shall be amenable to the Magistrates and Courts of Circuit,"¹ i.e., the judiciary established by the Regulations.

In 1813 an Act of Parliament (53 Geo. III, Cap. 155, section 105), conceded powers to the Magistrates of districts to try and punish European British subjects for petty offences as assault, forcible entry or injury, not being felony, without committing the offender to the Supreme Court. The punishment could, however, be only a fine not exceeding Rs. 500/-. A conviction by the Magistrate was removable by *certiorari* into the Courts of Oyer and Terminer and Gaol Delivery, at Fort William.² (See Chapter XIII.)

26. The same general law regarding European British subjects applied to the European officers and servants of

¹ This Regulation also elaborated the rules of procedure to be followed by the Magistrates in transmitting the offender to the Supreme Court. These rules were slightly modified by Regulation XV of 1806, which provided for bail instead of custody, and for report simultaneously to the Governor-General in Council.

² For subsequent developments after the Regulation period and till the Criminal Procedure Code of 1872, see Acts IV of 1843, VII of 1853 and XVII of 1862.

the Company. With regard to charges of corruption, embezzlement or other misdemeanour in their official conduct, an Act of the Parliament passed in 1793 (33 Geo. III, C. 52), explained how the Supreme Court at Calcutta, was to treat such cases when brought before it for trial. Section 62 of the Act, was as follows :—

“ * * * the demanding or receiving of any sum of money or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the party receiving the same, or for or pretended to be for, the use of the Company, or any other person whatsoever by any British subject holding or exercising any office or employment under His Majesty or the United British Company, in the East Indies, shall be deemed to be extortion, and a misdemeanour at law ; and shall be proceeded against and punished as such, under and by virtue of the Act ; and the offender shall also forfeit to the King's Majesty, His heirs and successors, the whole gift or present so received or the full value thereof.”

But apart from any such ultimate prosecution, the officers concerned, by virtue of their employment, were answerable to their superior authorities and the Governor-General in Council. This was really a matter of departmental discipline. Lord Cornwallis promulgated three Regulations (Regs. V, VI and XIII of 1793)¹ laying down the rules of procedure, when a charge of corruption or other misdemeanour was brought against judicial officers and their European assistants and subordinates. The enquiry was to be held by the *Sadar Dewany Adalat*, but the final decision, whether of departmental action or prosecution in the Supreme Court, rested with the Governor-General

¹ Repeated with some elaboration in the corresponding Regs. IV, V and VI of 1803.



in Council.¹ Regulation VIII of 1806 next introduced a system of enquiry by a special commission to be appointed by Government : and this was elaborated later by Regulation XVII of 1813, comprehending cases also of the officers of the Revenue, Customs and other departments. The commission would work under the superintendence of the head of the department concerned, *e.g.*, the Board of Revenue, the Board of Customs, the *Sadar Dewany Adalat*, and so forth, but would submit its report to the Governor-General in Council for such order " as may appear to him consonant to the principles of justice and to the constitutional powers possessed by Government in matters of this description " ; or he might direct a trial by the Supreme Court. Provision was also made for punishment in case of vexatious or false allegations. These rules remained in force till the Regulations were repealed by Act XXVI of 1839.

27. The foregoing account of the tribunals established by the Regulations, show that from the beginning the Mughal system of *Kazis* as constituting courts of justice was abandoned. The system had no doubt broken down in the latter period of the Muhammadan rule, but there was no attempt to revive it. The courts of criminal justice were taken over entirely by the European officers of the Company. For a long time, however,—although the English criminal law was followed in the Supreme Court of Judicature at Calcutta,—it was the Muhammadan jurisprudence which was sought to be applied in the *Sadar Nizamat Adalat*, the Provincial Courts of Circuit and the Courts

Some general observations on the tribunals established by the Company :

The Mughal system of *Kazis* as constituting courts of justice not revived.

¹ Reg. XIII of 1793, sec. 9(7), provided also for treating charges of corruption against European Registrars and assistants, as civil action with penalty (decree ?) of refund of the money received *plus* a fine of three times the amount. It may be

of Zilla and City Judges acting as Magistrates. Thus a *Kazi* and a *Mufti* were attached to each of these Courts to assist the English Judge (Regulation IX of 1793). The

—but *Kazis* and *Muftis* to assist the Judge with their opinion. *Kazi* and *Mufti* were to give their opinion (*Futwa*) at the close of the hearing, and the Judge would pass sentence accordingly, provided that it appeared to him that the opinion was “consonant to natural justice and also conformable to the Muhammadan law.”

But difficulties were felt very soon in reconciling a finding or sentence conformable to the Muhammadan law, and what appeared to the Judge as more consonant to natural justice according to his own notions. The punishments permitted by the *huds* in the Muhammadan law, appeared sometimes too severe and sometimes too lenient. The most vexatious to the English Judge was the Islamic law relating to cases of homicide. We will leave the reader to see for details the Synopsis of the relevant Regulations¹ in the Appendix. At first, all such cases which the Judge could not reconcile, had to be submitted to the *Nizamat Adalat* for orders. In 1797, Regulation IV laid down a

—but to be followed unless too severe according to British notions : of the Muhammadan law appeared repugnant to British notions, the courts were “notwithstanding to adhere thereto, if in favour of the prisoner in the case before them ; or, if against the prisoner, to recommend a pardon or mitigation of punishment to the Governor-General in Council.”

noted that under the plan of 1793, all European officers in the Revenue, Customs, Salt or Commercial departments, were liable to civil action for all acts done by them in contravention of the rules in the Regulations duly promulgated. See Chapter V *post*.

¹ Regulations IX of 1793, VI of 1796, IV of 1797, XVII of 1797, VIII of 1799, VIII of 1801, LIII of 1803, II of 1807, XVII of 1817, and IV of 1822.

28. This was a clumsy arrangement, and the policy thereafter, particularly after the special enquiry made by Lord Wellesley in 1801, was to lay down certain maximum punishments, imprisonment or fine, for various kinds of offences.

Gradual provisions of punishments for specified offences.

There was no one code for this during the Regulation period, but the provisions were scattered in a number of Regulations,¹ which were passed as occasions arose. The importance of *Kazis*, *Muftis*, *Pundits* and Law Officers, thus gradually ceased, except so far as they might be considered as helping the court with their opinion as to the guilt of the accused somewhat in the same manner as is done now by Assessors in some places. The *Futwa*, whether of "not guilty" or "guilty," could be ignored by the Judge, but a reference was necessary in such case to the *Nizamat Adalat* (Regulation IV of 1822). In 1829, when Divisional Commissioners took the place of Circuit

Kazis and *Muftis* abolished, but Muhammadan Law officers retained as optional, 1829-32.

Courts, the employment of Muhammadan Law Officers to assist the Commissioners was made optional. The *Kazis* and *Muftis* were abolished by Regulation VI of 1832, but the option of the Judge to obtain a *Futwa* from the Muhammadan Law Officer of the court was continued. The same Regulation, however, provided for *Punchayets*, Assessors or Jury in cases in which "the offence be one in which the Judge is not specifically empowered by the Regulations to punish." In such cases he was to transmit the proceedings to the *Nizamat Adalat* stating the opinion of the persons so employed and the Judge's own opinion "as to the crime proved, and the nature and extent of the punishment which should be awarded." The offences for which specific maximum or minimum punishments were provided in various Regulations,

¹ See Synopsis in the Appendix.

did not, however, cover all cases, and the language of section 5 of this Regulation indicates that in other cases the punishments were regulated by the *huds* in the Muhammadan law, subject to the provisions of Regulations IX of 1793 and VII of 1803 for circumstances when such punishment appeared to be too severe or not conformable to natural justice according to British notions. But an important exception was made in respect of non-Muslims who did not want the Muhammadan law to be applied to them. In such cases no *Futwa* of a Muhammadan Law Officer was necessary, and the cases would be disposed of in other manners indicated in the Regulation, *viz.*, with or without the assistance of a *Punchayet*, or Assessors or Jury, according to the nature of the offence.

29. We have noticed (paragraph 10 *ante*), that the application of the Muhammadan law in cases of murder, vexed the authorities from the beginning. According to

Cases of homicide and the doctrines of *kissas* and *deut* in Muhammadan law.

this law punishment depended much upon the demand of retaliation (*kissas*) or "price or blood" (*deut*) by the heir of the person slain, who might even pardon the murderer.

This doctrine meant as if the crime of murder was a matter of only private grievance of the heir of the man killed; and the authorities could not reconcile it with their own conception of public law. The Regulations of 1790 relating to criminal justice, thus superseded this doctrine, and declared that the will of the heir of the person slain was not to be allowed to operate, and that if the case was proved as wilful murder, the *Nizamut Adalat* was to sentence the murderer to death. This was repeated in Regulation IX of 1793, and again in Regulation IV of 1797. These provisions, however, did not cover cases of homicide not amounting to wilful murder. A provision was thus made in the latter Regulation, that in such cases *fi deut* or price of blood was demanded, the Court would

commute it to imprisonment which might be for life. Still there was a lacuna, and two years later Regulation VIII of 1799, ruled out the voice of the heir, servant, master or slave of the deceased, and finally abolished *kissas* and *deut* in cases of homicide whether amounting to wilful murder or not. This Regulation also laid down that irrespective of anything in the Muhammadan law, the ordinary law would apply in cases of killing of slaves, or killing or poisoning with the consent or request of the person killed. Another important deviation from the Muhammadan law was introduced in 1801. This was with regard to cases of *kutl khota* where a person intending to kill one killed another accidentally or where the person intended to be killed was killed not directly by the hit but indirectly (as by a rebound) or its consequences. It was laid down that the criterion in such cases was to be whether the accused had intended to kill a person, it being immaterial that by accident another person was killed in the act, or death was caused by a rebound of the hit in the act.

30. But there were difficulties with regard to other classes of crimes, particularly where the Muhammadan law did not lay down any *hud* or *kissas*, and consequently the *Futwas* of the *Kazis* and Law Officers regarding punishment varied widely. The special enquiry made by Lord Wellesley in 1801-02, to which reference has been made already, elicited a volume of information¹ regarding these difficulties, and Regulation

¹ Judge Pratt of the Murshidabad Circuit Court, in his letter dated 26th January, 1802, stated that the Muhammadan law as administered then, admitted "both of too much lenity and too much severity,—at any rate, of too much uncertainty. An offence which to one Law officer, may appear sufficiently punished by a month's imprisonment, shall from another Law officer, incur a sentence of three or more years. Even in heinous crime of robbery, our records will show sometimes a sentence of 14 years' transportation, and sometimes a sentence of two years' confinement." The consequences, the Judge observed, were "contempt of the law itself

LIII of 1803 which followed, included provisions for specific punishments¹ which the Courts were to impose in such cases irrespective of the *Futwa* of the Law Officers.

It was also observed in the Preamble to this Regulation that "the *Futwas* of Law Officers were often governed by a consideration of the degree of proof against the party accused rather than the degree of guilt and criminality of the act established against him; and the penalties

awarded by them in such cases were either
Cases of soobah or suspicion : adjudged on insufficient proof or inadequate to the seriousness of the offence

of which the prisoner was convicted." This Regulation thus laid down that no person was to be convicted on suspicion only, unless there was "strong and violent presumption" according to the Muhammadan law.² But there was an important provision also that where suspicion was strong, but not sufficient for a conviction, the Court

might direct the Zilla or City Magistrate
—Provision of security for good behaviour. to detain the accused in custody until he gave sufficient security for future good

behaviour and appearance when required; or until it was considered safe to set him at liberty. This was the first step³ towards the development of semi-judicial authority

and encouragement to offenders." His suggestion was that once an offender was found guilty, the punishment should be left to the discretion of the Court, and that the limits of such punishment should be fixed by Regulations. H. Strachey, the Judge-Magistrate of Midnapore (letter dated 30th January, 1802), made also similar recommendations, though in his view the Muhammadan law as administered did not on the whole operate "with too much lenity," except in cases of dacoity. "Many a felon is hanged in Calcutta" he observed referring to the administration of English criminal law by the Supreme Court of Judicature, "for a crime which, on conviction in the *mufussil* would incur the penalty of only a short term imprisonment." Particular emphasis was laid by the other Judges also on the need of severe punishment for dacoity or gang robbery.

¹ For some details, see the Synopsis.

² Called "Ghalib-oo-zum, Akbur-oo-Ra and Soobah-u-cuvvee or Shoobeed."

³ Other Regulations which dealt with this subject were, Regulations VIII of 1818, III of 1819 and IV of 1825.

of the Magistrate to demand, as a preventive measure, security for good behaviour, later extended to cases of apprehended breach of the peace.

31. Another class of cases which was considered as requiring special provision was *ina* or sexual offences of *ina* or *Feal suneah*. Regulation XVII of 1817 recited :—" the Muhammadan law of evidence in some cases, specially in those of *ina* (*Feal suneah*), including adultery, rape and incest, is such as to render a legal conviction almost impossible." This Regulation laid down that, under certain circumstances, the courts could convict and sentence the accused to the punishment prescribed in it, inspite of the *Futwa* of the Law Officers to the contrary.

32. Flaying alive or mutilation of limbs as a punishment, was forbidden by the edicts of Akbar¹, and Jehangir interdicted in particular the punishment of cutting the nose of a female offender.²

Punishment of mutilation stopped early. But it would seem that the practice of mutilation of limbs persisted, at any rate in Bengal ; and so it was that the *Futwas* of the *Kazis* and Law Officers, sometimes awarded this punishment. Warren Hastings's Regulations of 1772 put a bar to this kind of punishment, and the prohibition was repeated in Regulation IX of 1793, with this further direction that when the *Futwa* of the Law Officer was that the prisoner should lose two limbs, he was to be imprisoned with hard labour for 14 years, in lieu thereof ; and if one limb, then 7 years.

33. The revolting punishment of flogging an offender at the cart's tail on public roads, which was permitted

¹ Smith's " Akbar the Great Mughal," page 344. But *Ayeen-i-Akbari* mentions the punishment of mutilation of limbs as permissible.

² Elliot's History of India, Vol. VI, p. 503.

by the law administered in Calcutta by the Supreme Court,
was not recognised in any Regulation.

Punishment of whipping. But otherwise, whipping, as a punishment could be awarded, and in fact was considered as necessary and salutary in certain cases. Public exposition of a person convicted of perjury with a permanent mark on the body was also tolerated. Regulation IV of 1797 laid down that a convict transported beyond the sea

Branding convicts : life be branded on the forehead with *godena*.

The object, it was stated, was to facilitate re-apprehension, if the man escaped. Regulation XVII of the same year also laid down that when the *Futwa* of the Law Officer in a case of perjury, was —and perjurers and forgers. for *tusheer* (public expositor) under the

Muhammadan law, the words “derogh-go” or “jal-saz” would be branded on the forehead. Regulation II of 1807 extended this kind of punishment to cases of forgery also : but later, Regulation XVII of 1817 permitted a mitigation of such punishment.

There was, however, a growing feeling of revulsion against corporal punishment or branding.¹ In the Pre-

Corporal punishment and branding abolished in 1834 : and extended imprisonment provided in lieu thereof.

amble to Regulation II of 1834, the last of the Regulations, it was observed that corporal punishment had not been found efficacious for the prevention of crime either by reformation or by example.

On the other hand, the Preamble continued, “it was always highly degrading to the individual, and by affixing marks of infamy which often

¹ This revulsion of ideas had commenced in England, particularly following Buxton's “Inquiry whether Crime and Misery are produced by the present system of Discipline,” published in 1818. It had special reference to Prison management, and reforms of far-reaching effect were inaugurated in 1822 (4 Geo. IV. C. 64) and 1835 (5 & 6 Will. IV. C. 38).

are for ever indelible, prevents his return to an honest course of life," while if "injudiciously and unnecessarily inflicted," it became "a grievous and irremediable wrong." All provisions in the previous Regulations which authorised a sentence of corporal punishment by any court or Magistrate, were accordingly rescinded: and it was laid down that when under those Regulations such corporal punishment would be inflicted, an extended term of imprisonment in lieu thereof should be awarded.¹ This was modified by reservation of whipping, by Act III of 1844, later replaced by the Criminal Procedure Codes of 1862 and 1872.

34. The foregoing paragraphs indicate how the Muhammadan criminal jurisprudence was adapted or definitely departed from, to conform to British notions. There were, however, many evil practices, some of them inhuman, amongst the Hindus which seem to have been tolerated during the Muhammadan rule, and thus persisted when the Company assumed the functions of Government. These practices were:—

(1) *Dharna*—extending to wounding, killing or burning (koorah);

(2) Sacrificing children in the sea or river;

and (3) *Sati*—or burning of the widow with the deceased husband.

35. *Dharna* as explained in Regulation VII of 1820, meant "the practice of illegal duress by individuals, for the extortion of money, or for the recovery of debts without the authority of the civil magistrate; and also without such authority for retaining or receiving the possession of land

¹ A further interesting observation in the Preamble, which throws a side-light on the practices in other parts of India, was as follows:—" * * * it is becoming and expedient that the British Government as the paramount power in India, should present in its own system the principles of the most enlightened

or for carrying any other point of real, imaginary or pretended interest or right." Such duress extended to infliction of wounds on one's own self, or his female relatives and children or even to killing or burning alive in *koorah*. The practice prevailed in the Province of Benares and mainly amongst the Brahmins under a colourable protection of

—stopped in 1795, religion. Regulation XXI of 1795 sought

to stop this practice sternly. Persons killing or burning women on the pretext of *Dharna* were made liable as in case of homicide, and also to forfeiture of their lands. Those who simply sat in *Dharna* were liable to expulsion from the Province and forfeiture of title regarding the property in question, provided that in the opinion of the *Pundits*, the act amounted to *Dharna* according to the *Shastras*.¹ The practice apparently was noticed in some parts of Bengal, Behar and Orissa, and Regulation V of 1797 extended the provisions of the above Regulation to these places also. Regulation VIII of 1799 explained that the provisions were not to be understood as meant only for Brahmins, but also for persons of other castes when they committed *Dharna*. Their scope was also extended to all cases of duress practised by individuals without authority from the Magistrate, although not strictly within the meaning of *dharna* as

meant by the "dharum" or its practice (*bevar*, *chullona* or *achrit*); and the *Pundits* were required to give their opinion (*vyavastha*) accordingly. Still where the offender was a Brahmin of the Province of Benares, he

Exemption of
Brahmins of Bena-
res from capital
sentence, taken
away in 1817.

legislation, and should endeavour by its example, to encourage the Native States to exchange their barbarous and cruel punishments of maiming, of torture, loss of limb, for those of a more merciful and wise character, by which the individual may be reformed, and the community saved from these brutalizing exhibitions."

¹ This Regulation also stopped a practice amongst the Rajkumars of the Province of Benares, of leaving or causing their female infants to perish for want of nourishment. It laid down that such cases would be tried as murder.



was exempted from capital sentence¹; and this partiality was removed by Regulation XVII of 1817 “as obviously repugnant to the principles of equal justice.”

The last Regulation on the subject was Regulation VII of 1820. An important provision in this Regulation was that the necessity of *vyavastha* from the *Pundits* as to whether an act amounted to *Dharna* or not, was done away with, and it was laid down that such cases might be tried as *zulum* (oppressing) with the usual assistance of the Muhammadan Law Officer of the Court.

36. The cruel practice of sacrificing children in the waters of the sea or river, was stopped by Regulation VI of 1802 passed during the administration of Lord Wellesley. The Preamble to this Regulation stated:—

Sacrifice of infants in the sea or river, stopped in 1802.

“It has been represented to the Governor-General in Council, that a criminal and inhuman practice of sacrificing children by exposing them to be drowned, or to be devoured by sharks, prevails in the island of Saugor, and at Bansbaryah, Chagdah, and other places on the Ganges. At Saugor especially, such sacrifices have been made at fixed periods, namely, the day of full moon in November and January, at which time also grown persons have devoted themselves to a similar death.” The Preamble continued—
“This practice, which is represented to arise from superstitious vows, is not sanctioned by the Hindu Law, nor countenanced by the religious orders, or by the people at large; nor was it at any time authorised by the Hindu or Mahomedan Governments of India.” It was thus declared that persons committing such acts upon children would be held as guilty of wilful murder and liable to the punishment of death, and those aiding and abetting to be

¹ When extending the other Regulations to the Province of Benares, Brahmins of that Province were exempted from capital sentence. Regulations XVI (section 23) and XXI (sections 7 and 9) of 1795.

liable as accomplices. The Magistrates were also directed to be particularly vigilant.

37. The practice of *Sati* was stopped during the administration of Lord William Bentinck by Regulation XVII of 1829, and persons concerned were declared as guilty of murder or accomplices to murder. The Regulation, excepting the last two sections relating to procedure, is still in the statute book and is operative.

38. These were noble measures, boldly adopted and courageously enforced. There was some opposition from the extreme bigotted class, but the general body of the people appreciated the humane intentions, and blessed the authorities. In truth, a new light, the dearest that contact with the West brought to India, was dawning. The mist of superstition, thickened by perversions in the name of religion, was yielding to reason and good sense.¹

One may say to-day,—why were not these reforms introduced earlier? Foreigners as they were, and yet not fully acquainted with the manners and customs of the country, and much less how these really tormented the people, though yet tied fast by ignorance and superstition,—they had to proceed with caution. The comparative ease with which the criminal jurisprudence of the Muhammadan law was replaced or modified, indicated that the people after all were sensible and responsive, and were ready to adapt themselves to a new order, when they were assured that the new order also aimed at maintaining

Sati stopped in 1829.

Some general observations on these measures :

—and on the modifications of the Muhammadan criminal law.

¹ How this moral revolt first showed itself in large conversions to Christianity from the educated class, then the growth of Brahmoism, and ultimately the development of what has been called the Neo-Hinduism which seeks to interpret the Vedas and the Upanishads in a truer and nobler light,—are matters of later history outside the scope of the present discourse.



the basic principle of all jurisprudence, namely, justice founded on the dictates of humanity, and impartially administered, irrespective of creed or caste.

39. It is a notable feature that the earlier Regulations did not seek any special provision for dealing with treason.

Regulation IV of 1799 was the first measure on the subject, and the circumstances in Lord Wellesley's time¹, necessitated it. By this Regulation, the Executive Government took authority to direct "immediate trial" by the Court of Circuit of persons charged with "treason, rebellion or other offence against the State." The procedure of trial, however, was the same as in an ordinary case, only the result, whether acquittal or conviction, was to be specially reported to the Governor-General in Council. We do not know whether there was any occasion to apply this Regulation in Bengal; but the development of the wars in other parts of India necessitated another Regulation in 1804 (Regulation X of 1804). This Regulation empowered the Governor-General in Council, to suspend the functions of the ordinary Courts in the trial of persons charged with hostility to the British Government by force of arms, or of openly aiding and abetting the enemies, and direct such trial by a Court Martial. The next Regulation was Regulation III of 1818 during the administration of the Earl of Moira (Lord Hastings), when, following the troubles on the Nepal frontier, hostilities broke out afresh in the Maharatta country. This Regulation gave extraordinary power to the Governor-General in Council to place any

¹ Apart from his wars of annexation within India, European politics arising from the ambition and intrigues of Napoleon were not without some ominous significance in India. Napoleon's Ambassador, General Gardanne, had induced the King of Persia to agree to supply provision and reinforcement to any French army marching through his country to invade India. Then there was the pact after the Treaty of Tilsit in 1807 for a Franco-Russian expedition against India through Asia Minor and Persia.

person under personal restraint without any immediate view to ulterior proceedings of a judicial nature, when such a course was considered necessary for "the preservation of tranquility in the territories of Native Princes" or for "the security of the British dominions from foreign hostility and from internal commotion." This Regulation, with some minor modification, is still in force.

APPENDIX TO CHAPTER II

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO ADMINISTRATION OF CRIMINAL JUSTICE

Lord Cornwallis

Regulation IX of 1793—This Regulation codified, with some modifications, the plan of administration of criminal justice adopted in 1790. It contemplated complete separation of the magisterial functions from the Collector of revenue. These functions were vested in the Judges of the Zilla and City civil courts with powers to try and pass sentence on offences of less serious nature. For serious offences they were to commit the cases to the Court of Circuit sessions which consisted of the same Judges who formed the Provincial Courts of Appeal in the four divisions with head quarters at Patna, Dacca, Murshidabad and Calcutta. The superior and final court of Appeal was the *Nizamat Adalat* (called also the *Sadar Nizamat Adalat*) consisting of the Governor-General and the members of his Council.

The Magistrate—The Judge of the Zilla and City Courts, to be also the Magistrate with duties "to apprehend murderers, robbers, thieves, house-breakers, all disturbers of peace and persons charged before him with crimes or misdemeanours."

Complaints or prosecutions for "misdemeanours," viz., "petty offences such as abusive language, calumny, inconsiderable assaults or affrays" might be tried by him as Magistrate and punished with imprisonment not exceeding 15 days, or fine up to Rs. 50, and if the offender was a zemindar or other landholder, up to Rs. 200.

Magistrate also competent to try offences of "crimes," such as "petty thefts when they shall not have been attended with any aggravating circumstances, or committed by persons of notorious bad character," and punish with "corporal punishment not exceeding 13 rattans" or imprisonment not exceeding one month.

Magistrate also competent to punish for vexatious complaints with similar fines or imprisonments as above.

Cases of a more serious nature than above to be committed by the Magistrate to the Court of Circuit for trial.

The Magistrate's procedure on receipt of a complaint was :—(1) issue of warrant for the arrest of the accused : (2) taking evidence of the prosecution witnesses on oath : (3) accused not to be required to take oath : (4) accused to be discharged if no *prima facie* evidence : (5) accused might give bail, except on offences declared not bailable, which were murder, robbery, house-breaking, theft or counterfeiting of the coin.

When the accused was a European British subject, the Magistrate to make enquiry as before, and "if he was satisfied that there were sufficient grounds for committing such British subject for trial," to direct that he be conveyed "under safe custody to one of the Judges of the Supreme Court of Judicature" (13 Geo. III, C. 63), and also to report the circumstance for the information of the *Nizam Adalat* (Section 19).

The Court of Circuit :—Four Courts of Circuit for the divisions of Patna, Dacca, Murshidabad and Calcutta.

The Patna Court to have jurisdiction in the city of Patna and the Zillas of Ramgor, Behar proper, Tirhut, Saran and Shahabad. The jurisdiction of the Dacca Court comprised the city of Dacca, the Zillas of Sylhet, Mymensingh, Dacca Jelalpur, Tipperah and Chittagong. The jurisdiction of Murshidabad Court comprised the city of Murshidabad, and the Zillas of Murshidabad, Bhoglepore, Rajeshahy, Purneah, Dinagepore, Rungpur, and the districts under the superintendence of the Commissioner of Cooch Behar which were not included in the independent territories of the Raja of Cooch Behar. The jurisdiction of the Calcutta Court of Circuit, comprised the Zillas of Nuddea, Beerbhom, Burdwan, Midnapore, the Salt districts, Jessore, the 24-Parganas, and such of the districts under the Collector of the town of Calcutta as were not within the jurisdiction of the Supreme Court of Judicature.

The Judges of the Provincial Court of Appeal were to be Judges of the Courts of Circuit in their respective divisions : a single Judge was competent to sit in session : the three Judges to divide into two such courts, one with the First Judge, and the other with one of the other two Judges, and move periodically from district to district. The Judges were to be assisted by the *Kazi* and the *Mufti* of the Court (and in capital cases by the Law Officers), who would, at the close of the hearing give their finding or *Futwa*. The Judge to pass sentence according to the *Futwa* if "consonant to natural justice and also conformable to the Muhammadan Law." Cases of capital sentence to be submitted to the *Nizamat Adalat* for confirmation, before execution. The *Futwa* of the Law Officers was to be in "accordance to the doctrines of Yusuff and Muhammad." Questions on points of law "respecting which no specific rules shall have been enacted by the Governor-General in Council," to be referred to the *Kazi* and *Mufti* for opinion, and if their "opinions shall appear

to the Judges contrary to the principle of natural justice, or to the Muhammadan Law, they are nevertheless to be guided by them, and after completing the trial and obtaining the *Futwa* of the Law Officers on the case," transmit the proceedings and the *Futwa* to the *Nizamat Adalat* for orders.

Mutilation of limbs as a punishment was forbidden. If the *Futwa* of the Law Officer was that the prisoner should lose two limbs, he was to be imprisoned with hard labour for 14 years in lieu thereof : if one limb, then 7 years.

In cases of murder the Courts of Circuit were " to proceed on the trial in the same manner as if the slain had no heir, and when the trial is completed, require the Law Officers to declare what *Futwa* they would have delivered, supposing the heir had been of sufficient age to demand *Kissa*, and had been present at the trial and prosecuted." The Courts of Circuit were not, however, to pass sentence, but submit the records with the *Futwa* to the *Nizamat Adalat*, together with information as to whether the heir of the slain had refused to prosecute, or that he had refused to appear during the trial or communicate his intention as to whether he claimed *Kissas* or retaliation, or whether the heir had not attained the age required by the Muhammadan Law to render him competent to claim *Kissas*. The *Nizamat Adalat* was then to ask the Head *Kazi* and the *Muftis* to deliver their *Futwa* upon the case, according to the doctrines of Yusuf and Muhammad. But the distinctions made by these Imams and by Huneefah as to the mode of committing murder were not to be adhered to, but the intention of the criminal was to be considered in determining the punishment, and not the manner or instrument of perpetration. In case the prisoner was declared liable to suffer death, but the heir of the slain instead of demanding *Kissas*, pardoned the murderer or required from him *Deut* or price of blood,

“ the will of the heir was not to be allowed to operate in either of such cases, but the *Nizamat Adalat*, provided that they approve of the proceedings held in the trial, shall sentence the murderer to suffer death.”

Religious persuasions of witnesses not to invalidate their testimony : contempt of court might be forthwith punished with a rattan not exceeding 15 strokes : incapacity, misconduct, profligacy in private conduct of Law Officer to be reported to the *Nizamat Adalat* : in case of difference of opinion amongst two Judges, the opinion of the senior Judge to prevail, and in case of three Judges—the opinion of the majority : sentences to be regulated by the Muhammadan Law excepting where a deviation was expressly directed by a Regulation : Pardon reserved by the Governor-General in Council.

The *Nizamat Adalat*—to consist of the Governor-General and the Members of the Supreme Council.

The Regulation was formally repealed by Act XII of 1873 : in the mean time there were modifications and partial repeals as below :—

Regarding Magistrates—Regulations II of 1796, IX of 1807, XVI of 1810, VII of 1822, VII of 1829, VIII of 1830, and Acts XVII of 1862, VIII of 1868 and X of 1872.

Regarding Courts of Circuit—Regulations VII of 1794, IV of 1797, VIII of 1799, II of 1801, XVIII of 1817, XII of 1825, VI of 1832, and Acts XVII of 1862, VIII of 1868 and X of 1872.

Regarding *Nizamat Adalat*—Regulations IV of 1797 VII of 1832, and Acts XVII of 1862 and VIII of 1868.

Regulation XII of 1793—Rules regarding appointment of Hindu and Muhammadan Law Officers.

(Explained by Regulation XVIII of 1817, modified in part by Regulation IX of 1807, XVIII of 1817 and III of 1827, and repealed by Act XI of 1864.)

Regulation XIII of 1793—Registrar of the Court of the Zilla and City Judge to be a covenanted civil servant : rules regarding ministerial officers.

(Explained by Regulation XVIII of 1817 : modified by Regulations VIII of 1794, LIV of 1795, IV of 1796, V of 1804, XVIII of 1817, III of 1827, and Acts XXVI of 1839 and XVII of 1862 : repealed by Act XXIX of 1871.)

Regulation XXIX of 1793—regarding appointment of *Kazi-al-Kozaat* or Head *Kazi* of Bengal, Behar and Orissa, and the *Kazis* stationed in the several districts, and their duties.

(Repealed formally by Act XI of 1864.)

Regulation XLVII of 1793—repeated the provision in Regulation IX of 1793, that in case of difference of opinion amongst the Judges of the Court of Circuit, the opinion of the majority of the Judges was to prevail, and where there were two Judges, the opinion of the senior.

(Repealed by Act VIII of 1868.)

Regulation XLIX of 1793—"Instances frequently occurring of proprietors and farmers of land, dependent talookdars, under-farmers and raiyats, seizing or ordering their agents and dependents to take possession by force, of disputed crops, under the pretext of their having a claim thereto ; and frays often ensuing in consequence, which are generally attended with bloodshed, and not unfrequently with the loss of many lives on both sides,"—this Regulation laid down that complaint might in such circumstance be preferred to the *Dewany Adalat* who would decide maintaining possession, and commit the party using violence for trial by the Court of Circuit.

(Amended by Regulations I of 1822 and XV of 1824, and repealed by Act IV of 1840.)

Sir John Shore

Regulation VII of 1794—Difficulties in despatch of business of civil matters and criminal cases by the three Judges of the Provincial Court : this Regulation laid down that one Judge might remain at Head Quarters, and the other two Judges divide into two courts of circuit, the *Kazi* accompanying one, and the *Mufti* the other : half-yearly and monthly gaol deliveries.

(Modified by Regulation I of 1807, explained by Regulation IV of 1823, and repealed by Act XVII of 1862.)

Province of Benares.—Regulation XI of 1795—*Pundits* of the Provincial Courts to expound the Hindu Law in criminal cases before the Court of Circuit (explained by Regulation XVIII of 1817, repealed by Act XI of 1864) : Regulation XII of 1795—relating to Registrars and ministerial officers (explained by Regulation XVIII of 1817 and repealed by Act XXIX of 1871) : Regulation XIV of 1795—applying the provisions of Regulation XLIX of 1795 in disputes regarding possession of tanks, reservoirs, wells and water courses (modified by Regulation XV of 1824 and repealed by Act IV of 1840). Regulations XVI and XXV of 1795—extending the Bengal Regulations regarding trial by Judges of circuit court, and difference of opinion, to the Province of Benares : Regulation XLIX of 1795—Head *Kazi* of Bengal, Behar and Orissa to be Head *Kazi* of the Province of Benares.

(Repealed by Act XI of 1864).

Regulation XXI of 1795—To put a stop to the practice of *Dharna* attended with crimes prevalent in the Province of Benares, this Regulation provided for apprehension and punishment of persons establishing *Koorahs* (for burning people), wounding or killing their females, or sitting *Dharna* (to resist legal process), and for preventing the Tribe of Rajkumars in that Province killing their female children : Brahmins causing the construction of

Koorah and persons firing it, to be tried for murder : Brahmins wounding women and children to resist or protest against legal processes to be liable to transportation, and when killing women and children to be liable as in case of homicide, and also forfeiture of land : for sitting *Dharna*—expulsion from the Province and forfeiture of title regarding the property in question, when in the opinion of the *Pundits* the act committed had amounted to *Dharna* according to the *Shastras* : people of the tribe of Rajkumars leaving or causing their female infants to perish for want of nourishment—to be tried as for murder.

(Modified by Regulations XVII of 1817 and VII of 1820, explained and extended by Regulation VIII of 1799, and repealed by Act XVII of 1862.)

Regulation I of 1796—Special rules for trial of offences in the Santhal Parganas through an assembly of hill-chiefs. The Preamble recited :—“ The hills situated to the south and west of Rajmahal, and in other parts of the Zilla of Bhoglepore, are inhabited by a distinct and an uncivilized race of people, differing entirely in manners, customs and religion, from the inhabitants of the circumjacent country, and who, as far as can be traced, never acknowledged the authority of the native Government.” Referred to conciliatory measures by “ late Mr. Augustus Cleveland ” and to the orders of 14th June, 1782, that “ the inhabitants of the hills shall not be subject to the jurisdiction of the ordinary tribunals of the country, but that all crimes and misdemeanours committed by them, should be tried by an Assembly of their Chiefs * * * under the superintendence of the Magistrate ” (of Bhoglepore or Rajmahal), the sentences of the Assembly being subject to revision by the Governor-General in Council, “ certain pecuniary allowances ” being, for these purposes, allowed to the Chiefs. This mode “ having been found to be highly satisfactory ” was continued with this modification

that the revision of sentences would be made by the *Nizamat Adalat* instead of the Governor-General in Council. This Regulation thus consolidated and explained the procedure : these hill people not to be tried by Muhammadan Law, nor the general Regulations : on complaint to Magistrate, if there was a *prima facie* case—to be referred to the Assembly of Chiefs, which would try it under the direct superintendence of the Magistrate, and pass sentence : Magistrate not to alter the sentence except by reference to the *Nizamat Adalat*.

(Repealed in part by Regulation XIV of 1810, and wholly by Regulation I of 1827.)

Regulation II of 1796—referred to a Resolution dated the 7th January, 1794, under the authority given by 33 Geo. III, Cap. 52, Sec. 151,* for commissions of Justices of the Peace “ under the seal of the Supreme Court of Judicature, by which the Magistrate of the several Zillas and Cities were appointed Justices of the Peace with authority to apprehend European offenders and send them to Calcutta for trial. This Regulation codified the detailed procedure to be followed in such cases.

(Modified by Regulations X of 1806, XX of 1825 and repealed by Act XVII of 1862.)

Regulation IV of 1796—Registrars authorised to exercise such powers of the Magistrate during the absence of the latter, as might be indispensably necessary for the immediate execution of the processes of the Provincial Court of Circuit.

(Explained by Regulation II of 1805, and repealed by Act VIII of 1868.)

Regulation VI of 1796—The Court of the *Nizamat Adalat* authorised to refer to the Governor-General in Council cases deserving pardon or mitigation of sentence,

* This reference is printed in some editions of the Regulations as 21 Geo. III, Cap. 65. This is obviously a mistake.

where otherwise according to *Futwa* of the Law Officers a more severe punishment was required : also for pardon to accomplices giving evidence in cases of a heinous nature, such as murder, gang robbery, arson and the like.

(Modified by Regulation I of 1801, and repealed by Acts VIII of 1868 and XXIX of 1871.)

Regulation IX of 1796—amplified the rule regarding list of defence witnesses before commitment.

(Repealed by Act XVII of 1862.)

Regulation XI of 1796—provided for punishment for resistance of process of the Criminal Court or Police.

(Explained by Regulation IX of 1801, modified by the same Regulation and Regulation XX of 1817, and repealed by Act XVII of 1862.)

Regulation III of 1797—Some administrative arrangements regarding movement of Courts of Circuit, to expedite jail deliveries.

(Repealed by Regulations II of 1804, I of 1806 and Act VIII of 1868.)

Regulation IV of 1797—The law for cases of homicide (Regulation IX of 1793) was further explained :—

(1) Wilful murder (*Kutl-Umd*)—*Kissas* would be assumed whether *Deut* claimed or not : Law Officer to give his *Futwa* of sentence accordingly : the Court then to submit the case to *Nizamat Adalat* for sentence, which might be up to death.

(2) Other kinds of homicide (*Shibeh-Umd*, *Kutlkhota*, *Kutl-ka-yeem-mokam-ba-khota*, *Kutl-ba-subbub*) if *Deut* or price of blood be claimed by the heirs of the deceased, Court to commute it to imprisonment which might be for life : if for life—submit to the *Nizamat Adalat*.

An important principle laid down in Section 4 was where the application of the Muhammadan Law appeared repugnant to British notions, the Courts were “ notwithstanding to adhere thereto, if in favour of the prisoner in

the case before them, or, if against the prisoner, to recommend a pardon or mitigation of punishment to the Governor-General in Council."

The Regulation authorised the *Nizamat Adalat* to order transportation beyond the seas of convicts for life or for 7 years or upwards : and to facilitate re-apprehension of life-convicts, to have the name and crime marked on the forehead of the convict by *godena*.

(Modified by Regulations VIII of 1801, LIII of 1803, XVII of 1817 and IV of 1823, and repealed by Acts II of 1849 and XVII of 1862.)

Regulation V of 1797—Regulation XXI of 1795 for *Dharna*, extended with modifications, to Bengal, Behar and Orissa.

(Repealed by Regulation VII of 1820.)

Regulation XIII of 1797—authorised vesting Assistants to Magistrates (Assistant Magistrates) with judicial powers.

(Repealed by Regulation XVII of 1862.)

Regulation XIV of 1797—provided for time limits of imprisonment by the former *Naib-Nazim* of Benares, when the prisoner failed to pay the fine imposed as *Deut* or otherwise.

(Repealed by Regulation XVII of 1862.)

Regulation XVII of 1797—Cases of perjury—when the *Futwa* was for *Tusheer* (i.e., marking on the forehead the words "derogh-go" or similar words) under Muhammadan Law, Court to order accordingly if the circumstance justified.

(Repealed by Regulation II of 1801.)

Lord Wellesley

Regulation II of 1799—Monthly jail deliveries of the cities of Dacca, Murshidabad and Patna : punishment for escaped convicts.

(Explained by Regulation II of 1804, and repealed by Regulation LIII of 1803 and Act XVII of 1862.)

Regulation IV of 1799—provided for a quick procedure for trial of persons charged with treason, rebellion or other crimes against the State, with the full control of “the Governor-General in Council or the Executive Government at Fort William.”

(Repealed by Act XVII of 1862.)

Regulation VIII of 1799—finally did away with the necessity of *Kissas* or consent of heirs of the deceased or of his relatives, master or slave : and extended the application of ordinary law in cases of killing of slaves, or killing or poisoning with the consent or request of the person killed.

(Repealed by Regulation VII of 1820 and Act XVII of 1862.)

Regulation IX of 1799—Law regarding resistance of process further tightened.

(Repealed by Act XXIX of 1871.)

Regulation X of 1799—Transmission of English translation of records of criminal cases for expeditious disposal by the Court of the *Nizamat Adalat*.

(Repealed by Act XVII of 1862.)

Regulation II of 1801—*Nizamat Adalat* to consist of three Judges one of whom to be a member of the Governor-General's Council (not the Governor-General or the Commander-in-Chief), the other two selected covenanted civil servants, not members of the Governor-General's Council.

(For repeals, Regulations X of 1805, XXVI of 1814, III of 1829 and Acts X of 1861, VIII of 1868 and XXIX of 1871.)

Regulation III of 1801—enjoined that no charge of perjury would be entertained unless committed by the Zilla or City Court, *i.e.*, not merely on private complaint.

(Repealed by Act XVII of 1862.)

Regulation VIII of 1801—Muhammadian Law of *Kutl khota* for cases where a person intending to kill one killed another accidentally, or where the person intended to be killed was killed not directly by the hit but indirectly (as by a rebound) or as its consequence,—not to apply, but the intention to kill was to be the criterion.

(Repealed by Act XVII of 1862.)

Regulation VI of 1802—penalised the inhuman practice of sacrificing children by exposing them to be drowned or to be devoured by sharks at the island of Saugor, at Bansberia, Chakdah and other places on the Ganges, as for murder or being accomplice to murder.

(Repealed by Act XVII of 1862.)

Twelve Regulations (VI to IX, XI, XII, XIII, XV XX, XXXII, XLVI and LI) extended the previous Regulations regarding criminal justice, with some modifications, to the Provinces ceded by the *Nawab Vizier*.

Regulation L of 1803—extended the rules of examination of witness in civil cases, to criminal trials.

(Repealed by Acts X of 1861 and XVII of 1862.)

Regulation LIII of 1803—Difficulties were felt in the application of the Muhammadian Law for the proper sentence in certain kinds of crimes in which the doctrines of *Tazeer*, *Acoobut* and *Seasut* applied. “First, offences in which no specific *hud* or *kissas* was provided, and the punishment was left discretionary for the correction or amendment of the offender. Secondly, offences in which *hud* or *kissas* was provided, but such sentence was barred by a remission of the claim to retaliation in cases of *kissas*, or by the scrupulous distinction made between strong presumption (*Soobah*) and positive proof. Thirdly, heinous crimes which were in a high degree injurious to society, and particularly for repetition, which required exemplary punishment beyond the prescribed penalties, with unlimited discretion extending to capital punishment. In exercise of discre-

tionary power in these cases, the *Futwas* of the Law Officers, were often governed by a consideration of the degree of proof against the party accused rather than the degree of guilt and criminality of the act established against him ; and the penalties awarded by them in such cases were either adjudged on insufficient proof or (were) inadequate to the seriousness of the offence of which the prisoner was convicted."

This Regulation therefore laid down that in such and similar cases, the Law Officers were not to be required to state the sentence in their *Futwas*, but punishment was to be awarded by the Court according to the scales laid down in it.

For murder committed in the prosecution of robbery, or aiding or abetting the same or being accessory thereto or preparation therefor—Death.

Robbers (including those aiding and abetting) wounding, maiming or torturing a person, or burning—not occasioning homicide—Imprisonment and transportation for life.

Leaders of gangs of such robbers convicted of repetition : or without such repetition where act attended with such cruelty, violence or other aggravating criminality which under the discretion allowed by the Muhammadan Law in cases of *Seasut*, might justify capital sentence—Death.

Persons going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they could commit such—Imprisonment and hard labour for a period not exceeding seven years.

Same penalties to persons guilty of murdering, wounding, maiming, torturing, etc., while making a " burglarious entry " by night into a dwelling house, tent or boat, etc., in the prosecution of their act of burglary or theft.

This Regulation also laid down that no person was to be convicted on suspicion only (termed in Muhammadan

Law—*Wuhm*, *Shuk* or *Soobah Zaefah*) when the evidence was undeserving of credit or was not sufficient to justify “strong and violent presumption” recognised as *Ghalib-oo-zun*, *Akbun-oo-Rae* and *Shoobah-u-Cuvvee* or *Shoodeed* : except that in cases of strong suspicion, not amounting to conviction, as well as upon proof of notorious bad character, the Circuit Judge might direct the Zilla or City Magistrate to detain the prisoner in custody until he gave sufficient security for his future good behaviour and appearance when required : or until it was considered safe to set him at liberty.

This Regulation also laid down that the *Nizamat Adalat* might reduce or remit punishment (as already authorised) without reporting to the Governor-General in Council : restricted transportation beyond sea to sentences of confinement for life : and special penalty for convicts escaping from jail, etc.

(Repealed by Regulations VIII of 1808, XIV of 1811, XVII of 1817, VIII of 1818 and Act XVII of 1862.)

Regulation II of 1804—fixed half-yearly period of jail deliveries in the divisions of Calcutta, Murshidabad, Patna and Benares : and quarterly deliveries in the Zillas of 24-Parganas, Dacca Jelalpur and Murshidabad.

(Repealed by Regulations XI of 1814, XVII of 1825 and Act VIII of 1868.)

Regulations III, VIII and IX of 1804—extended with modifications certain previous Regulations regarding criminal administration, to the Ceded and Conquered Provinces.

Regulation IV of 1804—The Province of Cuttack with its dependencies, to be called the Zilla of Cuttack included in the jurisdiction of the Court of Circuit of the Calcutta division.

(Repealed by Acts XVII of 1862 and VIII of 1868.)

Regulation VIII of 1804—annexing the Zillas of Allahabad and Goruckpur to the jurisdiction of the Court of Circuit at Benares.

(Repealed by Regulation XVII of 1825 and Act VIII of 1868.)

Regulation X of 1804—"Whereas during wars in which the British Government has been engaged against certain of the Native Powers of India certain persons owing allegiance to the British Government have borne arms in open hostility to the authority of the same and have abated the enemy," this Regulation assumed power for the Governor-General in Council to suspend the operation of the ordinary criminal courts in any place, and direct summary trials by Courts Martial.

(Repealed in part by Acts IV of 1872 and XVI of 1874.)

Regulation III of 1805—Corporal punishment (30 stripes) added for robberies and attempted robberies. Extended to the Ceded and Conquered Provinces by Regulation of 1805.

(Modified by Regulation I of 1811 and repealed by Act XVIII of 1862.)

Lord Cornwallis (Second time)

Regulation X of 1805—By Regulation II of 1801, the puisne Judges of the *Nizamat Adalat* were not to be members of the Governor-General's Council : and this Regulation of 1805 laid down that the Chief Judge of the *Nizamat Adalat* also should not be a member of the Governor-General's Council, but a selected member of the Covenanted Civil Service. The reason stated in the Preamble was that from "the nature of the relations subsisting between such Chief Judge as a member of the Supreme Executive branch of the Government" it was "exceptionable."

(Repealed by Regulation XV of 1807 and Act XVI of 1874.)

Regulation XVI of 1805—Chinsura and Chandernagore : while retaining the previous local courts as under the Dutch and the French, this Regulation provided for appeals to the *Nizamat Adalat* : and also gave jurisdiction to the Circuit Court of the Calcutta division.

(Repealed by Act VIII of 1868.)

Sir George Barlow

Regulation XVIII of 1805—Separate Magistrate for the Zangle Mahals of Birbhum, Burdwan and Midnapur, owing to the special nature of the tract.

(Repealed by Regulation XIII of 1833 and Act VII of 1868.)

Lord Minto (First)

Regulation I of 1806—Zilla Birbhum made subject to the jurisdiction of the Court of Circuit of the Murshidabad division instead of the Calcutta division (Regulations V and IX of 1793).

(Repealed by Regulations V of 1814, XVII of 1825 and Acts L of 1860, XVII of 1862 and VIII of 1868.)

Regulations VIII and X of 1806—Complaints or charges of corruption, or embezzlement of public money or gross fraud upon the Company, against a Collector or other European officer preferred before any Zilla, City or Provincial Court or the *Sadar Dewany Adalat*, which would be indictable in the Supreme Court of Judicature under the Parliamentary Statutes (S. 33 of 13 Geo. III, C. 63 and S. 62 of 33 Geo. III, C. 52),—to be inquired into first by a commission to be appointed by the Governor-General in Council : and then prosecution only if the Governor-General in Council so directed.

(Repealed by Regulations XVII of 1813, II of 1814 and Acts XXVI of 1839, XI of 1864, XXXIX of 1871 and XVI of 1874.)

Regulation XV of 1806—Zilla or City Magistrate, being also Justice of the Peace and taking cognizance of complaints of a criminal nature against a European British subject (Regulations II of 1796, V of 1799 and VI of 1803) : when to take bail and when to transmit the accused in custody to His Majesty's Justice of the Peace at the Police office in Calcutta, for trial by the Supreme Court.

(Modified by Regulation XX of 1825, repealed by Acts XXIII of 1854, VIII of 1855 and XVII of 1862.)

Regulation II of 1807—laid down that the punishment for forgery and wilful perjury must not be less than 4 years' imprisonment or more than 7 years' : and the offender was further liable to public exposure in the mode of *Tusher* to have the words "Durogho" or "Jalsaz" marked on his forehead : cases to be submitted to the *Nizamat Adalat*.

(Modified by Regulation XVII of 1817 and repealed by Act XVII of 1862.)

Regulation IX of 1807—Previous procedure of issue of warrant of arrest forthwith a complaint was sworn, was abolished : offences classified into non-bailable (treason, murder, robbery, house-breaking, theft, setting fire to a house, counterfeiting coin and similar other crimes declared as non-bailable by the Regulations), and bailable. For the former, warrant of arrest would issue, and for the latter—summons.

The previous rules of security or bail for the complainant, prosecutor, or witness were abolished, and personal recognisance was considered sufficient.

(Repealed in part by Regulations VIII of 1811, XX of 1817, VI of 1818, IX of 1831 and Act II of 1856, and wholly by Regulation XVII of 1862.)

Regulation XV of 1807—laid down that in future the *Nizamat Adalat* was to consist of a Chief Judge, being a member of the Supreme Council, but not the Governor-General, nor the Commander-in-Chief, and three puisne

114 ANALYTICAL SURVEY OF BENGAL REGULATIONS

Judges to be selected from among the Company's servants, rescinding the previous rule (Regulation X of 1805, Section 2) that the Chief Judge was not to be a member of the Supreme Council.

(Repealed by Regulation XII of 1811 and Act VIII of 1868.)

Regulation VIII of 1808—Exemplary punishment for dacoity with violence or burning of houses, up to death in which case Court of Circuit to submit to the *Nizamat Adalat*.

(Modified by Regulation XIV of 1811.)

A single Judge might sit in the *Nizamat Adalat* when necessary, but no sentence differing from the Circuit Court.

(Modified by Regulation IX of 1831.)

Similarly a single Muhammadan Law Officer of the *Nizamat Adalat* might give *Futwa*, but not differing from the Lower Court.

(Modified by Regulation VI of 1832 and repealed by Regulation XVII of 1817 and Act XVII of 1862.)

Regulation IX of 1808—provided for treating an absconding notorious dacoit guilty and liable to imprisonment or transportation for life, if, on issue of proclamation, he did not appear within two months: provided also for rewards to persons giving information.

(Modified by Regulation V of 1822 and repealed by Acts XVI of 1843 and IV of 1844.)

Regulation XII of 1808—A Native Court and a European Court in Serampur taken from the Danes.

(Repealed by Regulation III of 1816.)

Regulation II of 1809—regarding Courts Martial on Native (military) Officers and soldiers.

(Repealed by Act VIII of 1868.)

Regulation V of 1809—provided for apprehension and trial of native subjects of the British Government, committing heinous offences outside the limits of the British Provinces.

(Explained and extended by Regulation VIII of 1813 and repealed by Regulations IX of 1822, VIII of 1829 and Act I of 1849.)

Regulation I of 1810—dispensed with the necessity of the attendance or *Futwa* of the Law Officer, whenever there appeared to be sufficient cause for such procedure : but proceedings then to be submitted to the *Nizamat Adalat* for sentence, the Court recording its views on any question of Muhammadan Law in the case.

(Repealed by Act XVII of 1862.)

Regulation II of 1810—Zemindars and others desiring to employ armed horsemen (Cozahcks) in the Ceded and Conquered Provinces, to obtain the permission of the Magistrate.

(Repealed by Regulation XV of 1812.)

Regulation VI of 1810—provided for increased punishment on zemindars and others neglecting to report about dacoits (Regulation IX of 1807)—up to six months' imprisonment : and for harbouring such criminals—forfeiture of their estates.

(Repealed by Acts XVII of 1862 and X of 1872.)

Regulation XIV of 1810—explained that the *Nizamat Adalat* might mitigate a sentence awarded in a *Futwa*, or by the Hill Chiefs of Bhagalpur : and also empowered the same *Adalat* to grant pardon to an accomplice “ with a view to the discovery, apprehension or conviction of the principal offender or offenders.”

(Repealed by Regulation X of 1824 and Act XVII of 1862.)

Regulation XVI of 1810—empowered the Governor-General to appoint covenanted European assistants of the Zilla or City Judges as Joint or Assistant Magistrates, whenever it was considered expedient (further permissive provision by Regulation IV of 1821).

Also power to invest the Magistrate of any Zilla or City with a general and concurrent authority as Joint Magistrate in any contiguous or other jurisdiction.

(Repealed by Acts XVI of 1843 and X of 1872.)

Regulation I of 1811—provided for punishment of imprisonment or banishment for 14 years and to 39 stripes, for house-breaking with intent to rob : and for punishment for receiving stolen property. With a view to better control of the latter, an annual license was to be required from persons of the following classes :—Gold or silver-smiths, braziers or copper-smiths, iron-smiths, pawn-brokers, retail vendors of brass or copper or copper wares, *pykars*, or itinerant dealers in second-hand articles.

Persons found with *seend-kathi* were to be taken into custody and employed to work on the public road till security for good behaviour was furnished.

(Modified by Regs. XI of 1814, XXI of 1812, XX of 1817, XII of 1818, X of 1824, and repealed by Acts XVII of 1862 and X of 1872.)

Regulation VII of 1811—Police Darogas and landholders invested with the powers of Police, not to receive or enquire into charges of adultery, fornication, rape, calumny, abusive language, or inconsiderable assault, but refer for regular complaint to the Magistrate. Exception—cases of *maiham*, actual affrays or tumult where immediate interposition required for public tranquillity.

(Repealed by Regulation XX of 1817 and Act XVII of 1862.)

Regulation X of 1811—provided for penalty of imprisonment for importation of persons as Slaves or sale as Slaves.

(Repealed by Acts XVII of 1862 and VIII of 1868.)

Regulation XIV of 1811—Offices of the Judge and Magistrate of 24-Parganas, combined (*vide* Regulation VII of 1806 and X of 1808 *ante*).

Repealed by Regulation IV of 1823.)

Also provided that instead of transportation (which was difficult), imprisonment in Alipore Jail might be imposed.

(Repealed by Regulation IX of 1813 and Act XVII of 1862.)

Regulation III of 1812—Costs of witnesses to be deposited in certain cases, as adultery, rape, calumny, slight trespass or inconsiderable assault.

(Modified and repealed by Acts VII of 1846 and XVII of 1862.)

Police not to aid zemindars and others in distraint of tenant's properties (Regulation VII of 1799, V of 1800, XXVIII of 1803) unless actual resistance was sworn on oath. Penalty for abuse—6 months' imprisonment or fine up to Rs. 200.

(Repealed by Act XVI of 1874).

Regulation XXI of 1812—rescinded certain parts of Regulation I of 1811.

(Repealed by Act VIII of 1868.)

Regulation VIII of 1813—defined "Native subjects of the British Government" in Regulation V of 1809 : to include natives of foreign states in the civil or military services of the British Government while actually in such service.

(Repealed by Act I of 1849.)

Regulation IX of 1813—Transportation was to be to any such of the settlements in Asia as might be decided by the Governor-General in Council : where not possible, transported prisoners might be detained in Jail at Alipore : further provisions.

(Repealed by Act XVII of 1862.)

Lord Hastings

Regulation XVII of 1813—simplified the rules in Regulations VIII and X of 1806 regarding enquiries into charges against European public officers.

(Repealed by Act XXVI of 1839.)

Regulation V of 1814—Provincial Courts—Calcutta, Dacca, Murshidabad, Patna, Benares and Barielly,—each to consist of 4 Judges : and exercise both civil and criminal jurisdiction.

(Repealed by Regulation I of 1826 and Act VIII of 1868.)

Regulation VIII, XI and XV of 1814—better explained the punishments for murder, arson, theft : breaking into houses or boats : two or more offences.

(Repealed by Act XVII of 1862.)

Regulation XVI of 1814—extended Regulation XIII of 1813 to Benares and Bareilly.

(Repealed by Regulation XVI of 1816.)

Regulation XXV of 1814—In extension of the powers given by Regulation VIII of 1808, a single Judge of the *Nizamat Adalat* was authorised to hear miscellaneous references to or from the Courts of Circuit or Magistrates, provided that any reversal or alteration of the decision of the Court of Circuit or Magistrate would require approval by the other Judges.

(Repealed by Regulation IX of 1831.)

Regulation V of 1815—Bogri (in Midnapore) being “long infested by bands of plunderers,” the ordinary laws and Regulations were suspended in this district, and a Commissioner was appointed to act under the special orders of Government.

(Repealed by Regulation IX of 1817.)

Regulation III of 1816—Special rules (Regulation XII of 1808) for civil and criminal justice in Serampur rescinded.

Regulation XIV of 1816—Transportation (see Regulation IX of 1813) might be to the Island of Mauritius or its immediate dependencies : and convicts might be put to work at such place.

(Repealed by Act XVII of 1862.)

Regulation IX of 1817—Suspension of ordinary law in Bogri (Regulation V of 1815), withdrawn.

(Repealed by Act XXIII of 1871.)

Regulation X of 1817—Special Commissioner to try cases in Kumaon and other territories obtained from Nepal (between the rivers Jamuna and Sutlez) by the Treaty of 2nd December, 1815 : to be reported to the *Nizamat Adalat* for sentence.

(Repealed by Regulation V of 1829 and Act X of 1838.)

Regulation XVII of 1817—The Preamble recited :—
“ the Muhammadan law of evidence in some cases (especially in those of *Zina*, including adultery, rape and incest) is such as to render a legal conviction almost impossible ” : so also as regards perjury. But the existing Regulations, though they permitted mitigation or enhancement of sentence when the *Futwa* was one of conviction, did not permit a conviction when the Law Officers or the *Kazis* could not give a *Futwa* of “ guilty.” This Regulation accordingly laid down the circumstances under which the Courts could nevertheless convict an accused, and sentence him to proper punishment.

In cases referred to the *Nizamat Adalat*, two or more Judges were to sit to consider the circumstances ; if they concurred “ in the opinion that the proof against the prisoner so acquitted, whether founded on his free and voluntary confession, or on the testimony of credible witnesses, or on circumstances of strong presumption, is sufficient to convict him of the whole or part of the charge,” the Judges might convict and pass sentence of punishment accordingly.

(Extended to supposed cases of insanity by Regulation IV of 1822, and repealed by Act II of 1849.)

Similarly in cases before the Court of Circuit thus :—

For adultery, rape, or offence coming within the meaning of *Zina* or *Fial-i-shuneeea*,—where the sentence did not exceed 7 years’ imprisonment : and provided that

in "heinous crime of rape," the case was to be referred to the *Nizamat Adalat*. In case of adultery, it was necessary that the husband should be the prosecutor.

(Repealed by Act III of 1860.)

For culpable homicide not amounting to wilful murder, where the previous Regulations permitted sentence of imprisonment instead of *deut* or price of blood, punishment—imprisonment up to 7 years.

For murders committed in prosecution of robbery, burglary, or theft—death penalty (Regulation LIII of 1803 in this respect rescinded) on submission of case to the *Nizamat Adalat*.

(Partly repealed by Regulation III of 1825, and modified by Act XVI of 1825.)

Similarly for cases of violence during robbery, burglary etc.,—stripes, in addition to imprisonment or transportation, might be inflicted.

Wilful perjury, or subornation of perjury or foregery :—the punishment of *tusher* (public exposor), stripes and imprisonment up to 7 years under Regulation II of 1807, might be mitigated and lesser punishment imposed.

(Repealed by Act III of 1860.)

The Regulation also laid down the extent of sentences for fraudulently uttering forged documents, or having in possession counterfeit coin or stamped paper without lawful excuse, or for giving false evidence.

The punishment of "godena" or marking on the forehead (Regulation II of 1807) was rescinded (repealed by Act II of 1849) : the exemption of Brahmins in Benares from the punishment of death, was withdrawn.

(The whole Regulation was repealed by Act XVII of 1862.)

Regulation III of 1818—For "reasons of State, embracing the due maintenance of alliance formed by the British Government with foreign powers, the preservation of

tranquility in the territories of the Native Princes entitled to its protection and the security of the British dominions from foreign hostility and from internal commotion"—this Regulation empowered the Governor-General in Council to place any individual "under personal restraint without any immediate view to ulterior proceedings of a judicial nature," and to provide for allowance "for the support of such State prisoner": in the case of zemindar, *jaigirdar* or *talookdar*,—their estates might be attached and kept under temporary management of the Revenue Department of Government. Warrant to be issued by the Magistrate under authority from the Governor-General in Council.

Save for a minor alteration by Act XVI of 1874, relating to references in it to the Court of Circuit, the Regulation is in force still. It was extended in its application by Acts XXXIV of 1850, III of 1858, IV of 1872, and also to the Scheduled Districts and the Hill Tracts of Arakan.

Regulation VI of 1818—certain rules for shortening the detention of under-trial prisoners.

(Repealed by Act XVII of 1862.)

Regulation VIII of 1818—the provision in Regulation LIII of 1803 [section 2(b)] for security for good behaviour from persons proved to be of notorious bad character, expanded, *firstly*—so as to cover cases where the person might have been acquitted on a specific charge: *secondly*—extending the power of the Magistrate, up to a period of one year (explained by Regulation IV of 1825); of the Court of Circuit—up to three years; and to the *Nizamat Adalat* for longer period.

Further explained that in case of a prisoner being found to be a notorious gang robber (dacoit) of dangerous character, the Court of Circuit, while competent to inflict confinement "indefinitely," in default of security, *vide*

Regulation VIII of 1808 (section 9) the Court to examine the position again after three years, and release the prisoner if considered safe (extended by Regulation III of 1819).

Same principles to apply to prisoners already in prison for default of security at the time.

(The Regulation was repealed by Act XVII of 1862.)

Regulation XII of 1818—in cases of house-breaking with intent to steal, otherwise triable by the Magistrate, the Magistrate required to commit to the Court of Circuit where more severe punishment than what he could inflict (*viz.*, up to 6 months' imprisonment) was required : also cases of receivers of stolen property.

(Modified and partly amended by Regulations VI of 1824 and II of 1832. Repealed by Act XVII of 1862.)

Regulation VIII of 1818—cases of security for good behaviour—fixing the period for bond : power extended to Magistrates.

(Explained and extended by Regs. IV of 1825 and III of 1819 : repealed by Act XVII of 1862.)

Regulation XII of 1818—extending the power of Magistrates to cases of house-breaking.

(Amended by Regs. VI of 1824, IV of 1826, II of 1832 : repealed by Act XVII of 1862.)

Regulation III of 1819—extended application of the rules for good behaviour to notorious robbers and gangs.

(Repealed by Act XVIII of 1862.)

Regulation VII of 1819—punishment for enticing away females for prostitution—6 months : for neglect or ill-treatment of wife—one month, fine and maintenance : desertion by workmen—one month.

(Repealed by Act XVII of 1862.)

Regulation II of 1820—cases of Chandarnagore and Chinsurah made cognizable by the Magistrate of Hughli and the Court of Circuit of Calcutta, and the *Nizamat Adalat*.

(Repealed as regards Chinsurah by Regulation XVIII of 1825 : and as regards the rest by Act XVI of 1871.)

Regulation III of 1820—punishment for practice of pressing coolies or *begaris*.

(Repealed by Act XXIX of 1871.)

Regulation IV of 1820—Zilla and City Magistrates declared competent to give effect to the sentences of Courts Martial adjudging imprisonment with hard labour, on the offender being delivered to their custody.

(Repealed by Act XVII of 1862.)

Regulation VII of 1820—*Dhurna* defined as—"the practice of illegal duress by individuals, for the extortion of money, or for the recovery of debts without authority from the Civil Magistrate ; and also without such authority for retaining or recovering the possession of land, or for carrying any other point of real, imaginary or pretended interest or right." Necessity of *Vyavastha* of *Pandits* done away with, and in lieu thereof, *Futwa* of the Muhammadan Law Officer might be taken inasmuch as the offence was covered by the head of *Zulm* (oppressing). Magistrate—fine up to Rs. 200, in default civil imprisonment up to 6 months : Court of Circuit—up to civil jail for one year and fine up to Rs. 1,000 or refer to the *Nizamat Adalat*.

(Repealed by Act XVII of 1862.)

Regulation III of 1821—Assistants to the Zilla and City Magistrates (Assistant Magistrates) empowered to try cases and punish up to 6 months, thirty stripes, or 200 rupees fine : if heavier punishment required—judgment to be submitted to the Magistrate for proper sentence.

This Regulation also authorised Zilla and City Magistrates to refer petty offences for trial to the Hindu and Muhammadan Law Officers of their respective Courts, the latter having same powers as Assistant Magistrates. *Sadar Ameens* also to be similarly competent.

Provision for appeal in either case, to the Magistrate, if within one month.

(Repealed by Act XVII of 1862.)

Regulation IV of 1821—"Whereas it may be deemed expedient to authorise a Collector of land revenue or other officer employed in the management or superintendence of any branch of the territorial revenue, to exercise in certain cases the whole or any portion of the powers at present exercised respectively by a Magistrate or Joint Magistrate, or to vest the powers of a Collector of revenue or any portion thereof in the hands of a Magistrate or Joint Magistrate or Assistant to a Magistrate"—this Regulation while thus permitting transfer of the functions of a Magistrate from the Zilla and City Judge to the Collector laid down that the Magistrate-Collector, when exercising the functions of a Magistrate, would be guided by the orders of the superior Courts of Criminal Judicature : and when exercising revenue functions, by the Board of Revenue or the Board of Commissioners.

(Partly repealed by Acts XII of 1873 and XII of 1876 : rest is in force.)

Regulation I of 1822—affrays unattended with homicide or severe wounding, punishable by Magistrate without commitment.

(Modified by Regulation IX of 1822 and amended by Regulation VIII of 1828, Acts I of 1849 and XVII of 1862.)

Regulation IV of 1822—empowered the *Nizamat Adalat* to acquit in spite of the *Futwa* of the Law Officers to the contrary, when evidence not sufficient or was unsatisfactory.

In cases of murder where the justificatory plea was that the person was the mistress or relation of the accused, detected in criminal intercourse with another, and the heir of the deceased did not prosecute, the Law Officer of the *Nizamat Adalat* to declare what the *Futwa* would be if the heir had prosecuted.



Provided also for cases of persons becoming insane after commission of offence.

The doctrine of *hukoomati adul* (or fine for the expenses of medical treatment, etc.) in cases of corporal injury, not to be followed, but proper sentence of imprisonment up to 7 years.

(Repealed by Act XVII of 1862.)

Regulation V of 1822—Modified Regulation IX of 1808, to the extent that a proclaimed dacoit sentenced for the offence, by trial in his absence (on his absconding and not appearing), was liable to be tried again on his arrest or appearance and a higher punishment imposed.

(Repealed by Act VIII of 1868.)

Regulation VIII of 1822—Governor-General in Council might direct trial of a case at any station outside the district where the offence was committed. Reasons :—convenience of witnesses : also political reasons at the time.

(Repealed by Act XVII of 1862.)

Regulation IX of 1822—offences committed beyond the frontier were amenable to the Company's Courts, when the offender was a natural born subject of the British Government of India, etc. (Regulations V of 1809 and I of 1822 read with Regulation VIII of 1813) : this Regulation made these rules applicable to foreigners settling or residing for six months within the Company's territories.

(Repealed by Act I of 1849.)

Lord Amherst

Regulation II of 1823—Minimum punishment for affrays when attended with homicide—5 years.

(Repealed by Regulation XII of 1825.)

Regulation IV of 1823—when established Law Officer was absent, a Law Officer from another Court might be taken.

(Repealed by Act XVII of 1862.)

Regulation III of 1824—Governor-General in Council might extend the power of Magistrate and Registrars of Zilla and City Courts.

(Repealed by Act X of 1861.)

Regulation VI of 1824—regarding cases of two or more offences by the same person :—to be committed to the Court of Circuit for more severe punishment. Same, where offences were “distinct” in several cases, the Magistrate to finish all cases first, and then, if necessary, to commit to the Court of Circuit.

(Repealed by Act XVII of 1862.)

Regulation X of 1824—extended the power of pardoning in Regulation XIV of 1810 to other cases.

(Repealed by Act XVII of 1862.)

Regulation XI of 1824—provided for local investigation by the Registrars and report, under special orders of the Magistrate : caution in such procedure.

(Repealed by Acts X of 1861 and XXIX of 1871.)

Regulation XV of 1824—summary investigations in disputes about possession of lands, premises, or right to water for irrigation, likely to terminate in a breach of the peace, to be made by the Magistrate (instead of the *Dewany Adalat*—Regulations XLIX of 1793, XIV of 1795, XXXIII of 1803 and VI of 1813) : possession found, to be maintained subject to regular suit by party in the *Dewany Adalat*. No appeal from such summary decisions.

(Modified by Regulation IV of 1828, and repealed by Regulation II of 1829 and Act IV of 1840.)

Regulation I of 1825—persons authorised to execute the warrant or other process of a Magistrate, to have same powers as those of a Police Officer under such circumstances.

(Repealed by Act X of 1861.)

Regulation III of 1825—Section 8 of Regulation XVII of 1817 requiring reference to the *Nizamat Adalat* for sentence of all cases of conviction for robbery by open

violence, was modified; and the Court of Circuit was empowered to pass final sentence, except when offence committed by a gang or by armed persons, or was accompanied with murder or wounding.

(Repealed by Regulation XVI of 1825.)

Regulation IV of 1825—"Whereas the existing Regulations contain no express provision for empowering the Zilla and City Magistrates and Joint Magistrates, to take *Moochulkas* or penal recognizances for the maintenance of the peace in their respective jurisdictions, although it has been the established usage to require such in many instances"—this Regulation empowered those officers to require security for good behaviour both on conviction on a specific charge of unlawful act, and where unlawful act was apprehended.

(Repealed by Acts V of 1848 and XVII of 1862.)

Regulation V of 1825—removing doubts as to the legality of union of the powers of Judge and Collector in the same individual.

(Repealed by Act VIII of 1868.)

Regulation VIII of 1825—authority given to the *Sadar Dewany Adalat*, Board of Revenue, Board of Trade or other controlling authority when giving final judgment in a case brought against European public officer, to punish the accuser or informer with imprisonment in civil or criminal jail with or without labour and irons up to 6 months and fine up to Rs. 500, if the allegation appeared groundless and malicious: and in cases of "atrocious nature"—liable to criminal prosecution for perjury before the Court of Circuit.

(Repealed by Act XXVI of 1826. See also Regulation III of 1826.)

Regulation XII of 1825—Whipping rules explained—the use of *corah* was forbidden, but a ratan to be used. No female to be whipped.

Punishment for contempt of court—Rs. 200 or civil jail up to two months.

(Repealed by Act XVII of 1862.)

Regulation XV of 1825—modified the rules in Regulation III of 1825 (with Regulation LIII of 1803) about the jurisdiction of the Court of Circuit for sentencing in cases of robbery with open violence. Competent, without reference to the *Nizamat Adalat*, except when robbery committed by a gang of three or more armed men and the Court of Circuit were induced to inflict a lesser punishment than 14 years' imprisonment.

(Repealed by Regulation I of 1831 and Act XVIII of 1862.)

Regulation XX of 1825—serious offences alleged against commissioned or non-commissioned officers of the Army—Magistrate to transmit to the Officer Commanding for trial before a Court Martial.

(Repealed by Acts XI of 1841, IV of 1872 and XVI of 1874.)

Regulation I of 1827—rescinded Regulation I of 1797 : special rules of trial for the mountaineers of Bhagalpur.

(Repealed by Act XXIX of 1871.)

Regulation II of 1827—certain trials in Barielly regularised.

(Repealed by Act VIII of 1868.)

Lord William Bentinck

Regulation I of 1828—Governor-General in Council to have power to commute imprisonment for life to transportation.

(Repealed by Act XVII of 1862.)

Regulation II of 1828—explained the minimum punishment rules for affrays with violence under Regulation II of 1823.

(Repealed by Act VIII of 1868.)

Regulation VI of 1828—minimum punishment for homicide in affrays in Regulation II of 1823, not to apply in “affrays arising on a sudden altercation or dispute” : to apply when there was premeditation and preparation.

Assaults, etc., by way of self-defence, excluded.

(Repealed by Act XVII of 1862.)

Regulation VIII of 1828—Magistrate’s power extended to one year’s imprisonment and fine up to Rs. 200, for affrays unattended with homicide or severe wounding.

(Repealed by Act XVII of 1862.)

Regulation I of 1829—abolished the Courts of Circuit and transferred their functions to 20 Divisional Commissioners who were to be “the confidential advisers of Government,” and superintend over the Magistracy, the Police and the Collectors.

[Of these 20 Divisions, the districts in present Bengal came under nine, *viz.*, (1) Malda (with Bhagalpore, Monghyr and Purnea); (2) Dinajpore, Rungpore, Rajshahi and Bogra; (3) Murshidabad, Birbhum and Nadia; (4) Dacca, Dacca Jalalpore, Tipperah and Mymensingh; (5) Chittagong and Noakhaly; (6) Sherpore (and Sylhet); (7) Bakerganj, Jessore, Suburbs of Calcutta, 24-Parganas and Barasat; (8) Midnapore, Nugwan (Hidgelee) (with Cuttack, Balasore, and Khurda) and (9) Burdwan, Jungl Mahals and Hooghly.]

The reasons stated in the Preamble were :—“The Provincial Courts of Appeal and Circuit as now constituted, partly from extent of country placed under their authority and partly from their having to discharge the duties of both civil and criminal tribunals, have in many cases failed to afford that prompt administration of justice which it is the duty of Government to secure for the people. The Gaol Deliveries have been in some cases delayed beyond the term prescribed by law.”

A Commissioner of Revenue and Circuit appointed for each of the 20 divisions; Commissioners to hold Sessions

of Gaol delivery with the same powers as for the Judges of the previous Courts of Circuit.

Functions of Magistrate and Collector combined in the same officer.

Commissioners (who were also to be the immediate superior of the District Officers in revenue and general administration) to be confidential advisers of the Government.

(Explained by Regulations IV of 1830, II of 1831, modified by Regulations VII of 1831, X of 1831 and partly repealed by Regulations I of 1830, X of 1831, Acts III of 1935 and XIX of 1873.)

Regulation II of 1829—appeals to Commissioner of Circuit from “ any order or decision ” passed by a Magistrate or Joint Magistrate.

(Repealed by Act IV of 1840.)

Regulation III of 1829—official designation of the Judge of the *Sadar Dewany* and *Nizamat Adalat* changed.

Law officers of Provincial Courts abolished.

(Repealed by Acts VIII of 1868, XI of 1864 and XXIX of 1871.)

Regulation VI of 1829—extended power of Magistrates for sentence up to two years in case of two or more offences of theft, without commitment to the Commissioners of Circuit.

(Repealed by Act XVII of 1862.)

Regulation VII of 1829—Periodical Reports and Returns.

(Repealed by Act XVII of 1862.)

Regulation VIII of 1829—the provisions for the trial of Native British subjects in other States (Regulation V of 1809 and I of 1822) explained as including cases of apprehension in the limits of such other States, when person delivered to Magistrate in the British Provinces.

(Repealed by Act I of 1849.)

Regulation XII of 1829—in all cases of wounding, manifesting a deliberate intention to commit murder, Magistrate to commit the prisoner to the Commissioner of Circuit. The Commissioner competent to sentence up to 14 years. If the Commissioner differed from the Law Officer, as regards “intent to commit murder,” he was to refer the case to the *Nizamat Adalat*.

In all cases, *Nizamat Adalat* reserved power to revise the proceedings of the Commissioner.

(Repealed by Act XVII of 1862.)

Regulation XVII of 1829—declared the practice of *Sati* as illegal and punishable by the Criminal Courts : punishment also for zemindars and landholders, etc., not reporting to the police any case of *Sati* within their estates or talooks.

The *Nizamat Adalat* might sentence to death persons convicted of using violence or compulsion, or of having assisted in burying or burning alive a Hindu widow, while labouring under a state of intoxication or stupefaction.

(Partly repealed by Act XVII of 1862.)

Regulation IV of 1830—doubts having been entertained whether under section 3(4) of Regulation I of 1829, a trial could be held otherwise than with one of the established Muhammadan Law Officers of the Zilla Courts, this Regulation explained that it was not intended to restrict the Governor-General in Council or the *Nizamat Adalat* from specially appointing competent individuals of the Muhammadan persuasion to officiate as Law Officers.

(Repealed by Act XVII of 1862.)

Regulation VIII of 1830—Magistrate given power to examine defence witnesses, and then, if justified, release the accused instead of committing him to the Court of Circuit.

(Repealed by Act XVII of 1862.)

Regulation I of 1831—rescinded section 3(2) of Regulation XVI of 1825, requiring reference to *Nizamat Adalat* in certain cases of gang robbery.

(Repealed by Act VIII of 1868.)

Regulation II of 1831—regularised certain cases tried without reference to the *Nizamat Adalat*.

(Repealed by Act VIII of 1868.)

Regulation VII of 1831—Zilla and City Judges to be Sessions Judges and to hold gaol deliveries, instead of or in addition to Commissioner of Circuit.

(Repealed by Acts XVII of 1862 and VIII of 1868.)

Regulation IX of 1831—*Nizamat Adalat*—rules regarding sitting by single Judge : power to mitigate sentence without calling for proceedings in certain cases of manifest illegality or severity.

(Explained by Regulation VII of 1832 and repealed by Acts I of 1846, XVII of 1862 and VIII of 1868.)

Regulation II of 1832—Law Officers and *Sadar Ameens* trying petty thefts (under Regulations III of 1821 and V of 1831), competent to sentence to labour, in addition to corporal punishment or temporary imprisonment.

(Repealed by Acts XX of 1856, XVII of 1862 and VIII of 1868.)

Regulation III of 1832—persons concerned in the sale or purchase of slaves liable to 6 months' imprisonment and fine up to Rs. 200/-

(Repealed by Acts XVII of 1862 and VIII of 1868.)

Regulation VI of 1832—provided for assistance of respectable natives (as *punchaet*, assessors or jury) in trials by European Judges : (The requirement of *Futwa* of Law Officer was made discretionary by Regulation I of 1829) : but the Judge to decide according to his own judgment, except that when the crime was one for which he was not by any specific provision in a Regulation competent to

pass sentence, reference should be made to the *Nizamat Adalat*.

Kazis and Muftis abolished, and Governor-General in Council might appoint Law Officers : but “ it shall not hereafter be necessary that a *Futwa* be filed by the Law Officers in every case that may be referred for the final sentence of the *Nizamat Adalat*, but the Judge or Judges, by whom the proceedings shall be reviewed, shall exercise their discretion in requiring a *Futwa* or otherwise as may appear to them expedient and necessary.”

(Modified by Act III of 1860, repealed by Acts XVII of 1862, VIII of 1868 and XVI of 1874.)

Regulation VIII of 1833—Additional Judges of Zilla and City Judges, when necessary.

(Repealed by Act VI of 1871.)

Regulation II of 1834—“ Whereas corporal punishment has not been found efficacious for the prevention of crime either by reformation or by example : and whereas it is always degrading to the individual, and by affixing marks of infamy which often are for ever indelible, prevents his return to an honest course of life ; and whereas there is every reason to fear that it is in many cases injudiciously and unnecessarily inflicted, becoming a grievous and irremediable wrong ”—this Regulation substituted additional imprisonment in lieu of corporal punishment which would otherwise be awarded.

Provided also for committing the penalty of labour (with or without irons) to fine in cases which were punishable for less than 5 years, and excepting serious offences such as murder, dacoity, robbery, burglary, theft, forgery, perjury, arson, rape.

(Repealed by Acts III of 1844, XVII of 1862, I (B.C.) of 1864 and XXVI of 1870.)

CHAPTER III

POLICE ADMINISTRATION

The outline of the Mughal method of maintaining order, given in Ayeen-i-Akbari, mentions two officers, viz.,—the *Faujdar* and the *Kotwal*. The *Faujdar's* function was to see that the zemindars did not turn disobedient or rebellious, and the *Kotwal's* principal function was to keep vigilance in towns and apprehend offenders. For this purpose the *Kotwal* divided the town into *mahals*, and placed an officer in charge of each *mahal*. The enumeration of Police duties of the *Kotwal* is interesting :—

“ He must be particularly attentive of the nightly patrols ” so that the “ inhabitants might sleep at ease and every attempt of the wicked be prevented or frustrated.”

“ It is his duty to keep a register of all houses and frequented roads.”

“ He shall cause the inhabitants to enter into engagements, to aid and assist, and to be partaker of the joy and sorrow of each other.”

“ He shall also appoint spies over the conduct of the *Meer Mahal*, a person of that quarter and another who is unknown to him.”

“ Travellers whose persons are not known, he shall cause to alight at a separate *Serai*, etc., etc.”

“ He shall endeavour to keep free from obstructions the small avenues and lanes, etc., etc.”

“ When night is a little advanced, he shall hinder people from coming in and going out of the city.”

“ The idle he shall oblige to learn some art.”

“ He shall not permit any one forcibly to enter the house of another.”

“ He shall discover the thief and the stolen goods, or be himself answerable for the loss.”

“ He must not allow private people to confine the person of any one, nor admit of people being sold for slaves.”

“ He shall prohibit the smoking, drinking, selling and buying of spirituous liquors ; but need not take pains to discover what men do in secret.”

“ He shall not allow a woman to be burnt contrary to her inclination.”

“ He must be careful not to molest recluse worshippers of the Deity.”

He was required to see that coins did not pass at different rates and that correct weights and measures were used. Besides these, he had also to perform multifarious municipal duties.¹

2. The account given in Ayeen-i-Akbari does not throw any light as to the method of Police-

Police adminis-
tration outside the
towns :

administration outside the towns. In Bengal the *Thanadars* or the Police-officers in the interior and their staff, were maintained by the zemindar out of the lands and profits of his estate. The host of zemindari *pykes* (armed peons) also performed the double duty of village police and assisting the collection

¹ Of these duties, the following are interesting :—“ Out of each class of artificers, he shall select one to be at their head, and appoint another their broker for buying and selling, and regulate the business of the class by their reports.” “ He shall see that the market prices are moderate, and not suffer any one to go out of the city to purchase grain, neither shall he allow the rich to buy more than is necessary for their own consumption ” : “ He shall see that particular ferries and wells are kept separate for the use of women ” : “ He shall not permit women to ride on horse-back ” : “ He shall take care that neither an ox, a horse, a buffalo, or camel be slaughtered.”

of rent from the tenantry. Both Grant and Shore observe that the responsibilities regarding the police
—rested in the zemindars.
in the interior rested with the zemindars according to the terms of their zemindari *sanads* and custom. The Fifth Report of the Select Committee, 1812, thus describes the position of the zemindar¹ in this respect :—

“ The zemindar exercised the chief authority, and was entrusted with the charge of maintaining the peace of his district or zemindary. In his official engagement, he was bound to apprehend murderers, robbers, house-breakers, and, generally, all disturbers of public peace. If he failed in producing the robbers, or the thing stolen, he was answerable to the injured person to make good the loss.”

3. The same Report gives the following description of the zemindari establishment for police
The zemindar's police establishment.
purposes :—

“ Besides the usual establishment of guards and village-watchmen, maintained for the express purpose of police, the zemindar had, under the former system, the aid of the zemindary servants, who were at all times liable to be called forth for the preservation of the public peace, and the apprehension of the disturbers of it. The officers employed in the collection of the *Sayer* * * * possessed authority and officiated for the preservation of peace.”

¹ See also D. J. McNeile's special Report on the Police, 1865-66.

It has to be remembered, however, that the “ zemindar ” meant here is not the same as the zemindar we understand to-day, a term which includes a vast host of petty landholders for no other reason than that they pay the Government revenue direct into the Government treasury. The function and the responsibility concerned primarily the principal zemindars, namely, the 17 big zemindars mentioned in Grant's catalogue. These zemindars might have passed on their own responsibilities to their subordinate *talookdars* by private arrangement, but that was a different matter. The petty zemindari under *Muttafurukahs*, in Grant's Analysis, scattered over the larger estates, were little concerned.



As an instance of the magnitude of the establishment, the Report cites the case of the zemindar of Burdwan. "His police establishment, as described in a letter from the Magistrate, of the 12th October, 1788, consisted of *Thanadars*, acting as chiefs of Police divisions and guardians of the peace, under whose orders were stationed in the different villages, for the protection of the inhabitants, and to convey information to the *Thanadars*, about 2,400 *pykes* or armed constables. But exclusive of these guards, who were for the express purpose of the Police, the principal dependance for the protection of the people probably rested on the zemindary *pykes*— * * * no less than 19,000, who were at all times liable to be called out in aid of the Police." All these men were either provided with land by the zemindar out of his own estate, or were otherwise remunerated by him with monthly wages.

4. During the first five years of the Dewany, there was no interference by the Company's administration.

No interference
for some years.

But the method of settlement by auction introduced in 1770, which introduced in many cases outsiders or farmers, had the effect of crippling the authority of the zemindars, and the interest they might have taken in the peace and order in the estates which they had held for generations, was lost. It is true that the responsibilities of internal police,

Effect of the auc-
tion plan of land
settlement.

were enjoined on the outsiders and farmers who came in by the highest bids at auction : but the engagements with them were only for five years, and no serious interest, except for raising as much money as they could, could be expected from them. Disorder and crimes would have increased thus in any case : but what might have been wanting was completed by the failure of crops in 1768-69, and the widespread famine which followed upon it. The peace of the country, it was observed in one of the Regulations of

1772, was greatly disturbed, and bands of dacoits infested the roads and often plundered entire villages. The distress of the people must have been at the highest pitch.¹

5. Warren Hastings's scheme about Police-reform, was of a halting nature. The question here was mixed up with the question of land-revenue imposed upon the zemindars or farmers. The Police in the interior were remunerated with lands or profits from lands included in the settlements made with the zemindars, and it is probable that difficulties were felt in devising any scheme of Police organisation till the larger question of land-revenue settlement and resumption of Police lands was settled. Hastings made the *Thanadars* to a certain extent subordinate to the European Collectors in the districts, but otherwise they and their staff continued to be attached to the zemindar, though with powers and prestige materially impaired and his position rendered insecure by the drastic method of settlement by auction. This feeble attempt to control the *Thanas*, collapsed when the Collectors were replaced by "native *aumils*," with no other than revenue function to perform.

6. Real reform in the Police branch was commenced by Lord Cornwallis soon after his arrival in 1786. His plan aimed at making the Police independent of the zemindars, and it followed that any revenue-settlement with the zemindars would be exclusive of the lands allotted for the Police establishment. The difficulty was with the host of *pykes* (or armed peons) who performed the duty of assisting in the collection of rent as well as the duty of policemen. Orders were issued on the zemindars to disband all such

¹ The situation thus provoked the scathing remarks in the Report of the Committee of Secrecy, in 1773.

men, and retain only those as were necessary for the purpose of collecting rents. It followed that the zemindar and his officers were no longer responsible for the maintenance of peace and police duties. One immediate result of this plan was that the large host of disbanded *pykes*, whether driven by hunger or otherwise, themselves turned into thieves and robbers¹; and till they were absorbed in employment on land, they continued to be a menace to the tranquillity of the people.

Result not satisfactory.

Lord Cornwallis's final scheme was crystallised in the Regulations of 1793. In the Proclamation of the Permanent Settlement, it was first declared that the zemindars were "exonerated from the charge of keeping the peace," Government having appointed officers on its part "to superintend the Police of the country": [Sec 8(4) of Regulation I of 1793]. The organisation of the Police was then detailed in Regulation XXII of the same year. Every district was to be divided into a number of *thanas*² or police-stations, each in charge of a *Daroga* with an establishment of a number of armed constables. There were next to be village watchmen or *chowkidars*³, and a list of their names was to be maintained by the *Daroga*. But, curiously, their appointment and removal were still left in the hands of the landholders.⁴ The duty of the *Daroga* was to

His final scheme of 1790.

¹ "The services of the *Pykes* were lost to the Police, while such of these persons as were really disbanded are supposed to have had recourse to theiving for a livelihood": Select Committee, 1812.

² The idea was that a *thana* was to comprehend about 400 sq. miles, or there was to be a *thana* at distances of 10 *Kose* or 20 miles. The number of armed constables at each *thana* varied from 15 to 20.

³ Mr. D. J. McNeile in his special report on Police Administration (1865-66), observes that the term "chowkidar" was not applied to village watchmen till the Decennial Settlement of 1789-90.

⁴ Whether this was due to the fact that the Police lands had not yet been actually resumed is not very clear. But the idea at the time seems to have been

apprehend all offenders (including bad characters and persons who could not give satisfactory account of themselves), and send them up in custody to the Magistrate (the same as the Zilla or City Judge): and in all respects he was subordinate to the latter.

7. The new system failed to check the growth of organised robberies and dacoities, though by the year 1800 the menace of *Sanyasi* and *Fakir* gangs was effectively suppressed.¹

Measure to check
organised robberies
—1807-08.

In 1807, there was a partial reversion to the earlier system of associating landholders in the maintenance of order. Regulation XII of this year introduced a plan of *Ameens* (commissioners) of Police with powers in certain respects, similar to those of the *Darogas*. These *Ameens* were to be qualified persons selected preferably from zemindars, farmers of land and other responsible under-renters. With a view to co-ordinating Police action in dealing with organized gangs moving from district to district, one officer, called Superintendent of Police², was appointed for the Lower Provinces, and another for the Western or Upper Provinces: (Regulation X of 1808). Another important development was the

that the costs of the Police establishment of Government should be met from a distinct source of income other than the ordinary revenue. So it was that Reg. XXIII of 1793 imposed simultaneously a Police-tax on merchants, and traders, for whose security, it was stated, the Police were particularly needed. The tax was abolished in 1797, when in its place the system of fees on institution of suits was introduced so as to augment generally the revenues of Government. The Police tax was, however, revived in several towns in 1813, and at all headquarters stations of districts in 1814 (See paragraphs 12 and 16 *post*).

¹ See Chapter XII, "Sanyasi and Fakir Raiders in Bengal," by J. M. Ghose.

² This officer was quite different from the District-Superintendents of Police we have to-day. The Police in the districts were directly under the Magistrate, but were enjoined to aid the Superintendent when necessary: *vide* Reg. XXII of 1817. This Superintendent's functions merged in the Commissioners appointed under Reg. I of 1829. The officer was revived for a time by Act XXIV of 1843: but the District Superintendents of Police we have now, originated from Act V of 1861.

official organisation of *goendas*¹ or informers. At about this time a corps of irregular horse was also raised for the more effectual support of the Police in the Ceded and Conquered Provinces, quartered at Furruckabad.

8. In Bengal, the system of *goendas* seems to have attained certain amount of success ; and, as appears from a special Report of Secretary Mr. G. Dowdeswell, dated the 22nd September, 1809,² the authorities took to it with enthusiasm. But, as the same report discloses, the position was still very deplorable, and by way of illustration Mr. Dowdeswell cited the case of one *Thana* in Hooghly, where out of 104 house-robberies committed within a certain period, only 33 were brought to court. The plan of *Ameens* of Police had totally failed, and as people were unwilling to take up these honorary offices, in most districts it was a nullity. Mr. Dowdeswell imputed general corruption amongst the *Darogas*, and their rough manners in investigations : he spared the Superintendent of Police by stating that it was impossible for one man stationed at Calcutta to exercise such supervision as the circumstances required. For the Judge-Magistrate, he was not very charry, though he mentioned several for their energetic and efficient administration. One important thing, however, appears to have been missed, *viz.*, the necessity of placing the village Police on a sound footing. His recommendation about them did not go far enough, for,

The system of *goendas* and Mr. Dowdeswell's Report of 1809.

His criticism of the police generally and the magistracy.

His report ignored the village police.

¹ We have information of as early as 1792 about *goendas* and rewards for them : but as an official organisation they owe their origin to Mr. Blacquire of Nadia who is said to have successfully worked out a system in that District : Select Committee, 1812.

² The Report is reproduced in Firminger's Fifth Report, Vol. II, pp. 710, etc.

it did not suggest any change of the old system under which the appointment and removal of village watchmen still rested in the hands of the zemindar.

9. Mr. Dowdeswell suggested additional European officers as Superintendents of Police, and proposed a certain amount of *liaison* between them and the Magistrate. But the most important of his suggestions was that the Police *Darogas* were not to be allowed to meddle in petty offences such as inconsiderable assaults, use of abusive language, etc., and bailable offences such as forgery, adultery, etc., for which the parties were to be left to complain directly to the Magistrate. The *Darogas* were to confine their activities to cases of breach of peace and serious affrays, and to heinous crimes such as murder, robbery by open violence, etc.

His proposal for European Superintendents of Police.

Suggestion that Police not to meddle in petty offences.

10. Another important matter in the report was the clarification of the position of the landholders. They were of course at all times liable, like any other subject, if they connived at robberies, or took any part of stolen property, or harboured offenders, as laid down in Sec. 3, Regulation XXII of 1793; but they were also particularly liable to afford every assistance in their power to the officers of Government for apprehension of offenders: (Sec. 3 of Regulation XVII of 1795 and Sec. 3 of Regulation XXXV of 1803). These, he thought, were sufficient, and he would not give to the zemindar "a particle of power more than what they already possessed with respect to the Police," but nevertheless they were to be, from their position, especially responsible for communicating to the proper officer, intelligence of all serious offences committed within their estates.

Changed responsibilities of the landholders defined.



11. This Report is important as it explains the several Regulations which followed; and in fact it formed the basis of the policy regarding the Police during the rest of the period of the Company's administration.¹ In 1819 three important Regulations (VI, VII and XVI) were passed. A severe

Mr. Dowdeswell's report formed the basis of the Police system during the rest of the Company's period.

penalty was imposed on land-holders neglecting to inform the Magistrate or the Police *Daroga*, about the resort of habitual robbers in their estates. In case of actual assistance in harbouring such persons the penalty might extend to forfeiture of their lands. *Goendas* or spies were encouraged and liberal rewards for information were provided for. Three Superintendents of Police were appointed for the distant divisions of Patna, Benares and Bareilly. In the next year, Regulation VII of 1811 restricted the active functions of the *Darogas* to maintenance of public tranquillity and apprehension of offenders of serious crimes and habitual bad characters. But it was

Improvement of village watch, 1817.

not till 1817 that attention was directed to improving the watch system in rural areas and bringing the village *chowkidars* under greater control and closer touch of the *thana* officers. Regulation XX of this year required that these *chowkidars* should present themselves at the *Thana* twice every week (for the nearer villages, every day) and report the condition in their respective jurisdiction. The *chowkidars* were also authorised to apprehend persons committing breaches of the peace or other serious crimes in their presence. This, though belated, was a move in the right direction: but the method of their appointment and pay remained as unsatisfactory as before. The result was that these men,

¹ It is the basis even up to the present day, except that the village police has since been radically reformed by complete separation from the zemindar's influence.

particularly from the class from which they came, became only the menial servants of the *Darogas*; while so long as they were dependent for their living on the *chakran* or service lands allotted by the zemindar, they could not but be also subservient to the latter.

12. In the towns, however, a better method of surveillance was adopted in the mean time. We have noticed

that in 1793 a special tax was imposed on shopkeepers residing in the cities, *bazars* and *ganjes*, and on all merchants and

Watch and ward
in the towns :
special tax in 1793:

traders. This tax was intended to cover not only the cost of Police establishment in the towns, but the cost of the entire districts. The tax was abolished in 1797, when the system of court-fees for institution of suits was introduced : it being explained that the additional revenues thus derived would enable the Government to meet the costs of Police establishment. In 1809 (Regulation III), a separate levy for Police expenditure was partially revived in the Cantonments and Military *Bazar* areas : and this

policy was extended later in 1813 (Regulation XIII) to the towns of Dacca, Patna

and Murshidabad, where otherwise the Mughal system of *Kotwalis* (Town Police stations) was still maintained. Town *chowkidars* were established in these places for Watch and Ward on a pay of Rs. 3/- per mensem ;¹ and to defray the charge of this establishment a special tax on the owners and occupiers of every shop and every house in these towns was imposed. In the next year (Regulation III

of 1814) this plan was extended to all

headquarters stations of the Zilla Magistrates. The old type *Kotwals* were abolished in 1814, and they were now *Darogas* in charge of their respective stations.

¹ Raised to Rs. 4/- in 1817.

13. A sort of local self-government in respect of Town *Chowkidars* was established in 1816 (Reg. XXII) with a view to obtain greater co-operation from the citizens themselves. *Town chowkidars, Panchayets for assessment, 1816.* A *Panchayet* of five respectable inhabitants was established in every such town ; but still there was hesitancy to entrust these men with any responsibilities except to determine the amount of assessment to be levied on the inhabitants. Once the assessment was fixed its collection was the function of the Magistrate.

14. This was the general plan of Police administration throughout the Regulation period of the Company's administration in Bengal.¹ A fairly comprehensive Police Code was enacted by Regulation XX of 1817, consolidating the provisions of the existing Regulations, and specifying in detail the various kinds of duties to be performed by Police officers. Two or three subsequent Regulations made some minor modifications, but the general plan throughout the period was as embodied in this Regulation.² *Reg. XX of 1817 —the Police Code of the Regulation period.*

15. One salient feature of this scheme was that the Magistrate was the head of the Police in his district. The appointment, promotion, removal and all disciplinary powers over the *Darogas* and their subordinates, rested in the Magistrate. There was probably no objection even on ground of abstract principle, so long as the Magistrate's own power of trying *Some general observations :* *Magistrate, the head of the Police.*

¹ In the Ceded and Conquered Provinces, there was a reversion to the old system, when by Regulation XI of 1831, landholders, *talookdars* and others were vested with the powers of Police *Darogas*. The system in Orissa (Cuttack) was also somewhat similar, and certain zemindars continued to perform similar functions, while the local *Sardar Pykes*, *Khandaits* (sword-bearers) and inferior *Pykes* were made subordinate to the *Daroga* : Regulation XIII of 1805 which continued in force throughout.

² See the Synopsis in the Appendix.

and punishing was restricted to petty offences,—acts which would not ordinarily be the subject of “Police cases.” Nor could any exception be taken to his sifting the evidence before a serious or regular Police case was committed to the Circuit Court. But the position became changed when the Magistrate’s jurisdiction was extended to graver offences and his powers of punishment to imprisonment up to six months, then one year and ultimately two years. This position became open to stronger objection when the function of the Magistrate, as also the head of the Police, was combined with that of the Collector, while the drastic rules of *haftam* and *pancham* were still operative and the Collectors of revenue could not be said to be altogether disinterested officials. A separate head of the Police was not established till the appointment of District Superintendents under Act XV of 1861.

16. Another noticeable feature is the financial outlook with which the Police organization was viewed. With the many external obligations to which Bengal’s revenues were subjected during this period, it is not surprising that the Company would seek a separate source of income and separate taxation to meet the cost of Police establishment, as if this was not a primary charge on the ordinary revenues of the State.¹ Resumption of Police *chakran* lands in estates brought under direct management had commenced as early as 1773,² and with a view to wholesale resumption eventually: but this was not sufficient and in 1792 a special tax on houses, shops, etc., was imposed to defray the Police expenses. There was a suspension of this tax in 1797, but it was revived in 1809 and extended later

¹ Bengal had a large surplus every year, but it had to bear the deficits in other Provinces, the costs of military operations in other parts of India, and the charges in England.

² This would appear from a letter of Warren Hastings, dated 18th April, 1774.

to all district towns. A separate tax for the maintenance of town-police no longer exists in Municipal areas, but the old plan still persists in the rural areas, where a *chowki-dari* tax is levied on each householder.¹

APPENDIX TO CHAPTER III

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO POLICE ADMINISTRATION

Lord Cornwallis

Regulation XXII of 1793—Darogas of Police stations to apprehend persons—

(1) against whom a written charge of criminal offence was preferred by any person ;

(2) persons found in the act of committing a breach of the peace or against whom a general hue and cry had been raised, or who was detected with stolen goods in their possession ;

(3) notorious dacoits or robbers and vagrants of all descriptions (*geedur-mars, malachus, syr bejuas*) without any ostensible means of subsistence or who could not give satisfactory accounts of themselves.

Same for *Kotwals* (in Towns).

Persons apprehended to be taken in custody to the Magistrate, except in cases of offences which could be tried by the Magistrate, in which cases to take security for appearance. Security for appearance to be taken also from the prosecutor in cases of class (1).

¹ If one reason for abolishing it in Municipal areas be that the people there have to pay the municipal tax, it would seem to apply equally in such rural areas where union rates have been imposed.

Darogas not to try cases, but might release an accused in petty cases when the parties filed *rajeenama* (compromise).

Village watchmen (*Pykes, Chowkidars, Pushbans, Dusads, Nigabans, Haris*, etc.), to be subject to the orders of the *Daroga*. Landholders appointing them to report in cases of deaths and vacancies, and how filled up.

Duties of Village watchmen—to apprehend and send to the *Daroga*, persons taken in the act of committing murder, robbery, house-breaking or theft or against whom a hue and cry was raised : to report to the *Daroga* information about robbers.

(Modified for Cuttack by Regulation XVIII of 1805.)

Partially repealed by Regulations IX of 1807, XVI of 1810, XIII of 1814, XX of 1817, VIII of 1822, Act VIII of 1868 and finally by Act XXIX of 1871.)

Regulation XXIII of 1793—refers to the introduction of the Police system on 7th December, 1792, for which it was “considered equitable that shop-keepers residing in the several cities, towns, *bazars* and *gunjes*” should defray the Police expenses. Police-tax thus imposed was to be annually assessed, on “merchants, traders and shop-keepers residing or having places of trade, shops or *golas* therein,” sufficient to cover expenses with 5 per cent. extra for costs of collection : collection to be in charge of the Collector.

(Repealed by Regulation VI of 1797.)

Sir John Shore

Regulation XXII of 1795—modified the rules (since 1781) regarding Police, for the newly acquired Province of Benares.

(Repealed by Act VIII of 1868.)

Regulation XI of 1796—procedure in case of resistance to Police process : proclamation for absconders.

(Repealed by Regulations IX of 1801, XX of 1817 and Act XVII of 1862.)

Regulation II of 1797—defined more specifically the responsibility of landholders and farmers in the Province of Benares, regarding Police duties : wilful negligence to be tried by the Magistrate,—sentence by the *Nizamat Adalat*.

(Repealed, after modifications in several Regulations, by Acts XVII of 1862 and XXIX of 1871.)

Regulation VI of 1797—abolished the tax imposed by Regulation XXIII of 1793 on houses, etc., for defraying the expenses of the Police : and in lieu fees for institution of suits introduced.

(Revived by Regulation XIII of 1813 and extended by Regulation III of 1814.)

Lord Wellesley

Regulation XI of 1801—explained the provisions of Regulation XI of 1796 regarding apprehension of persons resisting a Police warrant.

(Repealed by Regulation IX of 1829.)

Regulation XII of 1801—Police officers (amongst others) to have power of seizing contraband salt.

(Repealed by Regulation X of 1819.)

Regulation III of 1804—More stringent punishment, extending to forfeiture of lands, for land-holders and others resisting Police (and other) process.

(Repealed by Regulations XX of 1817, VII of 1820 and Act XVII of 1862.)

Lord Cornwallis (Second time)

Regulation XIII of 1805—for the administration of Police in the zilla of Cuttack, through the local *Sardar*

Pykes, Khandaits and inferior *Pykes* : also zemindars as were not specifically divested of Police powers : all these to be subordinate to the *Darogas* or officers of Police : *Darogas* to receive fixed salaries from Government.

General extension of the Regulations regarding Police to Cuttack.

(Repealed by Act XVI of 1874.)

Lord Minto (First)

Regulation IX of 1807—modified the Police procedure on receipt of complaint or information. Warrant to arrest the person accused was to issue forthwith in cases of a non-bailable nature (*e.g.* treason, murder, robbery, house-breaking, theft, setting fire to a house, counterfeiting coin and other crimes declared by Regulations as non-bailable) ; but in other kinds of cases a summons would issue ordinarily, for appearance. The previous rules of security or bail for the prosecutor or witness were abolished and personal recognizance was to be considered as sufficient.

(Repealed by Regulations VII of 1811, XX of 1817, VI of 1818, III of 1821, IX of 1831 and Acts II of 1856 and XVII of 1862.)

Regulation XII of 1807—introduced a system of *Ameens of Police* with power to receive complaint and issue warrant like the *Daroga* : but the case would be forwarded to the *Daroga* for investigation and further action. The *Ameens of Police* were to be qualified persons selected, preferably from zemindars, farmers, and responsible under-renters. They were to assist the Police officers generally and “ all *pykes, chowkidars, pushabans, dosads, nigabans* and other descriptions of village watchmen ” who were (by Section 12 of Regulation XXII of 1793) subject to the orders of the Police *Darogas*, were declared equally subject to the orders of the *Ameens of Police*.

(Repealed by Regulation VI of 1810 and Act VIII of 1868.)

Regulation XIV of 1807—*Ameens of Police* extended to the Ceded and Conquered Provinces and Benares : also amended the previous Police system in that area.

Regulation X of 1808—Appointment of a *Superintendent of Police* for the Lower Provinces, and defining his authority and jurisdiction. The Superintendent was also to be the Magistrate for 24-Parganas (see Regulations XIV of 1811 and I of 1829 *post*).

(Repealed by Regulations XIV of 1811, I of 1829 and VIII of 1868.)

Regulation III of 1809—provided for a levy for the support of the Police in Cantonment and Military *Bazars*.

(Repealed by Acts XII of 1864 and XXIX of 1871.)

Regulation VI of 1810—provided for penalties on zemindars, landholders, their farmers or officers, for neglecting to give information to the Magistrate or the Police *Daroga*, of “ the resort of *dacoit*, *cozauk*, *thug*, *buddeck* or other robber ” within the estates : and also special penalty extending to forfeiture of estate in case of “ actual assistance in harbouring ” such persons.

(Repealed by Acts XVII of 1862 and X of 1872.)

Regulation VIII of 1810—Appointment of Superintendents of Police in the Divisions of Patna, Benares and Bareilly.

(Repealed by Act VIII of 1868.)

Regulation XVI of 1810—provided for rewards for apprehension or information about proclaimed robbers, etc., and unknown offenders of magnitude.

(Repealed by Regulation X of 1824 and Act XVII of 1862.)

Regulation VII of 1811—“ Whereas there is reason to believe that abuses have been practised by the Police *Darogas* and zemindars entrusted with the charge of Police,”

this Regulation laid down rules explaining that the attention of the *Darogas* and zemindars “should be exclusively directed to the maintenance of public tranquillity, and the adoption of the prescribed measures for bringing to justice persons accused of the commission of those species of crimes, which are most injurious to the peace and happiness of society.”

Police officer forbidden to swearing witnesses : punishment for malicious charge up to 6 months. Magistrates forbidden to refer to Police officer for investigation of complaints except those which brought charges which were cognizable by the Police.

(Repealed by Regulation XX of 1817 and Act XVII of 1862.)

Regulation XIV of 1811—rescinded such part of Regulation X of 1808 as provided for the Superintendent of Police being also the Magistrate in 24-Parganas.

Lord Hastings

Regulation XIII of 1813—established *Town Chowkidars* in the cities of Dacca, Patna and Murshidabad : on a salary not less than Rs. 3/- per mensem : two *chowkidars* for every 50 shops or occupied habitations. Duties—“constantly to watch over and protect the safety of the persons and property of the inhabitants of their respective *muhallas* ; to apprehend and immediately to convey to the *Daroga* or City *Kotwal* persons “taken in the act of committing murder, robbery, house-breaking or theft, or in the actual commission of any serious breach of the peace, or against whom a hue and cry shall have been raised.”

“Whereas it is just and expedient that the communities for whose benefit and protection such establishments may be entertained should defray the charge of their maintenance,”—this Regulation also provided for the

levy of a tax not exceeding in the average 2 annas per mensem, from the proprietor, or in the absence of the proprietor, from the occupier of each shop or habitation.
(Repealed by Regulation XXII of 1816.)

Regulation III of 1814—extended the system of *Town Chowkidars* and taxation for their expenses (Regulation XIII of 1813) to the several stations at which the zilla Magistrates ordinarily resided in the Divisions of Calcutta, Murshidabad and Patna.

(Repealed by Regulation XXII of 1816.)

Regulation XIII of 1814—abolished *Kotwals* in the cities of Dacca, Murshidabad and Patna.

(Repealed by Act VIII of 1868.)

Regulation XXIX of 1814—Police duties of the *Ghatwals* of Birbhum.

Regulation XVII of 1816—Police officers stationed at outposts competent to exercise the same powers as the *Darogas* in apprehending persons without warrant, but persons apprehended to be forthwith forwarded to the *Daroga*.

(Repealed by Regulations I of 1829, XI of 1831 and Acts XVII of 1862, II (B.C.) of 1864, XXVI of 1870 and XVI of 1874.)

Regulation XXII of 1816—consolidated with modifications the Regulations regarding *Town Chowkidars*: the main modification being that there was to be a *Panchayet* of five respectable inhabitants “for the purpose of regulating and of annually raising and amending the rates of assessment to be levied on the inhabitants * * * as well as for nominating and appointing such *chowkidars*, subject to the approval of the Magistrate.” The *Panchayet* however were not to be in charge of the collection of the assessment, for which purpose a *Bukshi* (clerk) was to be appointed by the Magistrate on a monthly salary: distress by Magistrate in case of arrears.

(Modified by Regulations VII of 1817, III of 1821, VII of 1829 and Act XV of 1837 and repealed by Act XX of 1856.)

Regulation XIX of 1816—Police *Darogas* required to report periodically on the state of ferry boats.

(Repealed by Regulation VI of 1819.)

Regulation VII of 1817—raised the pay of *Chowkidars* of Police to Rs. 4/- per mensem.

(Repealed by Regulations IV of 1822, III and XVI of 1825, VI of 1832 and Acts II of 1849, III of 1860, II of 1849 and XVII of 1862.)

Regulation XX of 1817—An important Regulation consolidating with modifications and rescissions the provisions in previous Regulations relating to Police, and laying down the first comprehensive Police Code with detailed rules of the various kinds of duties of the Police, and procedure.

The Preamble after stating the necessity of this, for “better information and guidance” of Police officers indicated the general position—“that the proprietors and farmers of land and their local managers, and the *mandals*, *patwaris* and other heads of villages, should be declared responsible for reporting unnatural or suspicious deaths, and for affording due information to the Police whenever any individual of suspected conduct, released from the criminal jail, may resort to dishonest means of livelihood; and also that they should be declared liable to penalties for neglecting to afford due aid in supporting the processes of the Magistrates and *Darogas* of Police.”

Appointment, transfer, removal, etc., of *Kotwals* (in towns) and of *Darogas* vested in the Magistrate (as under Regulation XVII of 1816): Police in charge of *thana* to conform to the instructions of the Magistrate: required to aid the Superintendents of Police and Joint and Assistant Magistrates.

Provision of *thana* books, and paged diaries : register for heinous and other offences : *dawk* stations for speedy transmission of information and reports.

Police officers not to trade or employ subordinates in private work : no professional spy except with special sanction.

Police officer to maintain a complete list of village watchmen, and the names of the landholders nominating or appointing them.

Village watchmen to be subject to the orders of the Police *Daroga* : to report to the *Thana* all occurrences,—daily if within one *kose*, or once a week or fortnight according to distance.

Village watchmen to apprehend and send to the *Thana* proclaimed offenders : and persons taken in the act of committing murder, robbery, house-breaking or theft : or “ against whom a hue and cry shall have been raised of their having been concerned in a recent criminal offence.” Also to convey immediate information to the *thana* of intelligence of any robbers who may be concealing themselves in the village, or other persons lurking about without any ostensible means of subsistence. Also immediate information to the *thana* of all murders, robberies, burglaries, thefts, violent affrays and other heinous offences : to patrol within their *mahallas*.

Detailed procedure of the *Daroga* on receipt of such information from village watchmen.

Zemindars, other landholders, headmen, etc., refusing to assist, to be punishable according to Section 19 of Regulation IX of 1807.

Rules for the guidance of *Darogas* when required to assist landholders in distrains under Regulation VII of 1799 : and to revenue officers generally in the performance of their revenue duties : also the *Abkari* officers.

Processes against weavers, salt-makers and opium growers, engaged in the provision of the Company's invest-

ment, to be executed through the commercial Agents or residents : not to be forced to appear till after the manufacturing season.

Darogas to assist in the seizure of illicit salt, illicit opium, etc.

Darogas to report all cases of breaches or apprehended breaches of public peace : to report encroachment on public roads : to take to custody dangerous lunatics.

Darogas to afford assistance and security to despatches of public treasure : and as far as possible of bankers and merchants also.

(Repealed by Regulations XII of 1818, VI and VII of 1829, XI of 1831, II of 1832 and Acts XVIII of 1835, XXXI of 1852, X of 1859, VIII(B.C.) of 1862, XVII of 1862, VII(B.C.) of 1864, VI(B.C.) of 1870, I of 1871, X of 1872, XVI of 1873, XV and XVI of 1874, VIII of 1875.)

Regulation XII of 1818—*Darogas* given discretion to arrest or not a person accused of certain offences specified in Section 25(1) of XX of 1817, including thefts not attended with burglary or violence, where no previous offence by the person accused.

(Repealed by Act XXIII of 1870.)

Regulation III of 1821—Police given powers to apprehend foreign vagrants and send to the Magistrate : landholders also made responsible for reporting to the Police about such vagrants.

(Repealed by Acts XX of 1856 and XVII of 1862.)

Lord Amherst

Regulation IV of 1823—Superintendent of Police (or Magistrate) not to try cases committed by himself.

(Repealed by Act XVII of 1862.)

Regulation XI of 1824—Powers of the Superintendent of Police to ask for tender of pardon to any accused to

secure evidence : and to report to the *Nizamat Adalat* for Magistrate refusing pardon or tendering pardon improperly.

(Repealed by Act X of 1826 : see also Regulation I of 1829.)

Lord William Bentinck

Regulation I of 1829—Commissioners, then newly appointed, to be also Superintendents of Police.

(Repealed by Inconsistent Provisions Repealing Act I of 1903.)

Regulation XI of 1831—*Tehsildars* in the Ceded and Conquered Provinces vested with the powers of Police *Darogas*.

(Partially repealed by Acts XVI of 1854 and XVI of 1874.)

Regulation II of 1832—petition to the Police required to be on stamped paper in complaints of cases of burglary and theft unattended with personal violence.

The salary and allowance of the *Bukshees* appointed in the collection of *chowkidari* taxes in towns to be met from the amount of assessment levied.

(Repealed by Acts XX of 1856, XVII of 1862 and VIII of 1868.)

CHAPTER IV

ADMINISTRATION OF CIVIL JUSTICE

(a) *Methods up to 1772*

We have seen how during the declining days of Mughal power, administration of justice had to a very large extent passed into the hands of the zemindars and other persons of local influence. Disputes between tenant and tenant regarding their lands, and perhaps also succession by inheritance, were, in the nature of the conditions of things even during the earlier days of that power,¹ settled by the zemindars. But apart from this, in civil matters, the Muhammadan Government did not interfere with the personal laws of the subjects to whatever religion, sect or social group they belonged. While the *Koranic* law, supplemented where necessary by the *Sunnat* and *Hadis*, was followed in all questions of family relations, inheritance, contracts and endowments (*Wakf*) in the case of Muslims,—in the case of Hindus, they were left to follow their own *Shastras* and their variations as recognised by custom in different localities and amongst different communities. The *Maulvis* expounded the Muhammadan law, while the interpretation of the *Shastras* and customary

State of the administration of civil justice when the Company acquired the Dewany.

¹ The Courts of Justice were established in the important cities, but the administration in the villages was left largely in the hands of the local people. The power thus tended to concentrate in the zemindars : or rather the power which the local landholding chiefs, called *rajas*, used to exercise during the Hindu period, was not much disturbed. There were headmen, the chiefs of the earlier *Mandalikas*, and later *Morols*, or *Mandals* : but the zemindars had their *kacharis* and the *Jaigirdars* their *Jilaukhana*. For a fuller description see Wahed Husain's "Administration of Justice during the Muslim Rule in India," 1934.

law was left to the *Pandits*. They were controlled by the constitutional tribunals¹ on the Dewany side: and when these tribunals were disorganised, people followed the mandates of the *Maulvis* and the *Pandits*, while it was left largely to the zemindars or persons of influence² forming local social groups, to enforce them. It might be called a form of "self-government" of necessity; but, devoid of any control by a superior constitutional authority, it was a fruitful source of grave abuse.³ The position was the opposite of what would exist in any organised Government, and verged almost on anarchy.

2. There could be no question that the function of regulating this branch of the administration had passed to the Company along with the Dewany⁴ they obtained in 1765. But, as has been noticed before, the Directors at first took a very limited view of their position, and confined themselves to mere collection of the revenues. It was, however, not long before they began to feel that even for the purposes of

Position on the acquisition of Dewany:—control of civil justice not assumed at first.

¹ These were in the following chain:—The *Diwan*—or the Chief Civil Court: the *Sadr*—or Chief Civil Judge below the Diwan: the *Adl*—or the subordinate Civil Judge. The Canon Law of the Muslims had the same tribunals as the criminal Law, viz.—The *Subahdar's* Court: The *Kazi-ul-Kuzat*: The *Kazi*: The *Naib Kazi*.

² Village communities in the sense as they are understood in Southern India never existed in Bengal. Persons of local influence formed into groups like *Panchayet*, and enforced social punishments such as outcasting, expiation by a feast or some ceremony and the like. The aboriginal races of Santhals on the Rajmahal side maintained their own group system down to the British period.

³ To quote from the Regulations of 1772:—Under the breakdown of the Mughal system the local courts, beyond easy reach of Murshidabad, had tended to fall in abeyance, and, in their default, the officers of the zemindars and other local magnates had in practice exercised a jurisdiction to which they had no lawful title. The Courts of Justice had tended to become resorts open only to the rich, while the poor brought to them were liable to be ruined by the expenses of the journey and the neglect of their lands during their absence.

⁴ The functions of the Dewan under the Mughal constitution comprised not only collection of revenues and expenditure but also dispensation of civil justice, as opposed to criminal justice which was the province of the *Nazim*.

revenue they could not let the administration of civil justice drift on without some control by a superior authority. A change of policy came over in 1769; and when in September that year, they sent out a Commission, they authorised that body to "make strict and speedy inquiry into the proceedings of the courts of justice throughout their settlements,"—meaning the persons or bodies who were then functioning as such tribunals. This Commission, unfortunately, did not reach India, as the ship in which its members were coming was lost in the sea. The authorities at Calcutta, however, appear to have already given a start for the new policy. In the instructions which were issued the same year (1769) by the President, Mr. Blecher, to the European Supervisors in the districts, it was directed that—"where any disputes arise in matters of property, you (meaning the Supervisors) should recommend the method of arbitration to any other." This was far from assuming authority over civil justice: and probably referred only to disputes about which landed property was involved, and a speedy settlement of which was necessary for the purposes of the revenues they were to collect. Really it was not till the Court of Directors expressed their "determination" to "stand forth fully as Dewan," six years after the acquisition of Dewany, that steps were taken to organise tribunals of justice and to bring them under the control of the Company's officers. They formed part of the comprehensive schemes of reform, or rather assumption of governmental functions, which were inaugurated during the administration of Warren Hastings.

Change of policy
in 1769:

—more definite in
1771.

(b) *Warren Hastings's scheme of 1772*

3. The line of action taken by Warren Hastings for organising the tribunals of civil justice, was quick

and bold.¹ The scheme devised in his Regulations of 15th and 21st August, 1772, contemplated complete assumption of judicial functions in civil matters, by the European officers of the Company, both at the district headquarters and at the Presidency. The European "Supervisors," styled then "Collectors," were not to be mere "lookers on," but they were themselves to constitute the civil courts in their respective jurisdictions,² to be called the *Muffassil Dewany Adalat*; and at the capital of the Province, the Governor-General and two members of his Council were to constitute the superior or chief civil court, to be called the *Sadar Dewany Adalat*.³ The landholders were not, however, altogether deprived of the judicial functions they had been exercising; but zemindars and farmers of *parganas* were permitted to act in an inferior capacity directly subordinate to the Collectors, and with jurisdiction limited to cases of value not exceeding Rs. 10.

The district courts, *viz.*, the *Muffassil Dewany Adalat*, had jurisdiction over all disputes relating to property, real or personal: all causes of inheritance, marriage and caste: all claims of debt, disputed accounts, contracts, partnerships and demands of revenue. Claims to zemindaries were, however, excluded from the jurisdiction of these courts: they were reserved for the decision of the President (the Governor) and Council.

¹ Warren Hastings had arrived at Calcutta in February, 1772; and although he did not take over final charge from John Cartier till April, his schemes were apparently being worked out in the meantime.

² A member of the Council, instead of a Collector, presided at the "head seat of Government" (Art. VIII).

The European officers in the districts previously called "Supervisors" were styled "Collectors" at this time. The idea was that these persons were not to be mere supervising officers (or "lookers on"), but be in active charge of the collections of revenue, with other duties added: Hastings's letter to J. Dupre, dated the 6th January 1773.

³ The seat of this court was at Calcutta.

There was, however, no intention to disrespect the “personal laws” of the inhabitants of the country, Hindus or Muslims; and the Regulations of 15th August, 1772,

When personal law was to be followed and how, explained that—“In all suits regarding inheritance, marriage, caste and other

usage or institution,—the laws of the *Koran* with respect to Muhammadans, and those of the *Shastras* with respect to Gentoos, shall be invariably adhered to; and on all such occasions the Maulvis or Brahmins shall respectively attend, to expound the law, sign the report and assist in passing the decree.”¹

4. There was, however, a radical change in the scheme of district courts, when, in pursuance of an order from the Court of Directors in 1774, the European Collectors were withdrawn from the districts;

Effect of withdrawal of European Collectors from the districts in 1774, and the superintendence of each district was left in the hands of a native *Aumil*, except for such matters as had

been left to the zemindars and “responsible” farmers. Five Provincial (or

rather Divisional) Councils were established at Murshidabad, Burdwan, Dinajpur, Dacca and Patna: and these Councils,

besides performing their other functions, constituted the *Dewany Adalats*, except that in districts remote from

their seats, there were “native” *Naibs* appointed by them who held court in civil

—and of *Naibs* at districts, matters within their respective jurisdictions. An appeal² lay to the Provincial Councils from all decisions of the

¹ Colebrooke's Supplement, p. 3.

This was also the rule during the Mughal rule. “Non-Muslim subjects (*Dhimmi*) are not subject to the laws of Islam”—*Fatawa-i-Alamgiri*: see also Baillie's “Digest of Muhammadan Law,” p. 174.

² No court-fee was required for such appeal. All proceedings of the *Naibs* whether there was an appeal or not, were also required to be submitted to the Provincial Councils.



District *Naibs*, and when the value was Rs. 1,000¹ or above, an appeal lay to the *Sadar Dewany Adalat*.²

5. So far, the new plan implied a distinct recognition of "native" service in responsible judicial offices. Whether this was due to paucity of European officers at the time, we do not know; but there was a reversion to the earlier policy, very soon. In 1780, the Native *Naibs* were replaced by European officers called "Superintendents." These officers were appointed directly by the Governor-General in Council, and were intended to be distinct and independent of the Provincial Councils. Appeals³ from their decisions lay to the *Sadar Dewany Adalat*; and the Provincial Councils ceased to have any function in matters of civil justice, except causes relating to demands of revenue or rent, and complaints of undue exaction by the officers of Government or others.⁴ Excluding these matters, the Superintendents had jurisdiction generally over all disputes relating to real or personal property, including inheritance to zemindaries,⁵ and mercantile matters, debts and contracts. The scheme of 1780 thus introduced what has been called

Scheme of Superintendents: no revenue jurisdiction.

¹ In cases of revenue-paying or rent-paying land the valuation was to be taken at one year's revenue or rent. This throws an interesting side-light as to the market-value of such landed properties. In case of revenue-free lands the valuation was taken at 10 years' purchase of the rental assets.

² In cases relating to the conduct of zemindars and the principal officers of Government, the authority for revising the decisions of the Provincial Councils lay with the Council of Revenue at Calcutta, and not the *Sadar Dewany Adalat*: Regulation XX of 1774.

³ The money-limit was Rs. 1,000. The valuation for revenue or rent-paying land was one year's "annual produce," and for revenue-free land, ten years.

⁴ Although the appeals were to be heard by the *Sadar Dewany Adalat*, the petitions had to be filed before the Provincial Council. This was not a mere formality, for, the object as stated in the Regulations was to check and "punish" vexatious and groundless appeals, and this meant that the Chief of the Provincial Council was required at least to express an opinion whether a petition was vexatious or groundless.

⁵ Questions of succession to zemindaries had hitherto been reserved by the President and Council. Apparently it was definitely found by this time that the

the “ first demarcation of civil and revenue courts : ” and formed the basis of what were later called the *Dewany* and the *Mal Adalats*.

6. “ Refer not his cause to the Dewan, for his grievance may be against the Dewan ”—
Defect of the scheme. was the injunction in *Ayeen-i-Akbari*.

The scheme of 1780 fell far short of this sound principle of good government : for, the very matters in regard to which an individual may have a grievance against the executive authorities were left in the hands of the same authorities.¹ However, in the following year the plan of separate officers for civil justice, excepting matters connected with revenue and rent, was materially

expanded. By a Regulation, dated the 6th April, 1781, the number of these Superintendents was increased to eighteen. In the same year European Collectors were re-established in each district for revenue purposes. The European Collec-

tors and Superintendents superseded the native *Aumils*. In four districts,² on the frontiers and “ so poor and thinly peopled that any additional courts or jurisdiction, instead of affording relief, might be productive of vexation to the inhabitants,” the Collectors of revenue functioned also as Superintendents of *Dewany Adalat*. In the remaining fourteen, there were two European officers, one the Collector and the other the Superintendent, styled then as “ Judge ” of the *Dewany Adalat*. In the same year,

zemindars had as much right of succession by inheritance as any other person holding landed interest, and all questions relating to inheritance might be left to subordinate judiciary for applying the ordinary law of succession applicable to the individual.

¹ But perhaps there was no alternative, for the revenue department itself was in a formative state : and no definite principles had yet been decided upon.

² Chettra, Boglepore (Bhagalpore), Islamabad and Rungpore.

the Provincial Councils were also abolished:¹ and the system of administration of civil justice² thus consisted of a Judge in each district and the *Sadar Dewany Adalat* at Calcutta, for appeals.

7. We have seen that in the scheme adopted in 1772, the disposal of petty disputes of value not exceeding Rs. 10, was left in the hands of the zemindars and farmers of *parganas*. When Superintendents of *Dewany Adalat* were appointed in 1780, the jurisdiction of the zemindars and farmers was extended to cases of values up to Rs. 100, but only when such cases were referred to them by the Superintendents. The Regulation (No. XXIV) on the subject laid down that "for the relief of the poorer people," the Superintendent "shall have power of referring causes not exceeding one hundred rupees (in value), to zemindars or public officers, or arbitrators chosen by the parties, residing near the spot where the cause of action shall have arisen; subject, however, to his revision in cases of flagrant injustice or partiality." This was a clumsy arrangement. The scheme implied that the "poorer classes" of people in the interior would have to come to the headquarters and institute their cases before the Superintendent in the first instance: and the Superintendent would then refer the cases to the local zemindars or farmers, or to arbitrators as might be chosen by the parties.³ This helped this class of litigants very little.

Inferior tribunals—zemindars and farmers, etc.: jurisdiction raised to Rs. 100, but only in respect of cases referred to them by the Superintendents:

¹ It was thus that Warren Hastings worked out his own plan of administration, to which Francis and his party were opposed. This final step was taken when Francis (after his famous duel with Hastings) had left India.

² This did not include matters which affected the revenues or rent. The Collectors constituted the *Mal Adalat*, i.e., the Revenue and Rent Court, for dealing with such matters.

³ This last meant that the defendant would also be called by the Superintendent on another day on which the parties would come to an understanding for arbitration.

The power of "revisal" by the Superintendent could be exercised only when the party preferred an objection to the Superintendent against the decision of the zemindar or farmer or other person to whom the reference was made, and that too only on the ground of "flagrant injustice or partiality." It could hardly be expected that the "poorer class"—the people in the villages,—would ever take this course and risk the displeasure of the zemindars or the other persons who carried influence in the locality. Another vicious aspect of this part of the scheme was that there was no provision for the remuneration of these "referees": and if they did not take advantage of their position for private gain, they at least realised the customery "chauth" or one-fourth of the value of the case, from the parties¹ to compensate them for their time and labour.

—but no provision for remuneration.

A move in the right direction to constitute a native judicial service independent of the persons interested as the zemindars and other landholders, appears to have been taken in 1781. By a Regulation, dated 5th July of this year, six *Munsifs*² or "public arbitrators" were appointed on a pay of Rs. 50 per *ensem*: but it does not seem that the plan advanced much further.³

¹ From which party? The plaintiff probably had to pay a *nazar* in the first instance: and eventually the other party had also to pay. There was no institution-fee under the Muhammadan constitution, but under later development a fine or fee might be levied not on the wrong-doer, but from the winning party out of the value of the property gained by him.

² Sher Shah's scheme had "Munsifs" as judicial officers; but there is no mention of "Munsif" during the Mughal period. It is an Arabic word meaning a "just and equitable man," and hence an officer dealing justice.

³ "Munsifs" in later Regulations were of a different type. They were selected from "native Commissioners" who were zemindars or their officers or under-renters, and were not paid any fixed salary.



8. This system worked till 1787 when a change, which may be called "retrograde," was introduced. Under instructions direct from the Court of Directors, all the three functions, *viz.*, of the Judge for civil justice, the Magistrate for criminal matters and the Collector for revenue purposes, were amalgamated in the same officer. But before we proceed to discuss this change, it is necessary to mention the events which followed in the meantime on the passing of the Regulating Act of 1773. Up to this time the Company had no authority from the British Parliament, to frame laws and regulations, or to establish courts of judicature outside the limits of Calcutta. The Regulations framed and the courts established in 1772 had for their authority nothing better than what were implied in the Dewany *Farman* of 1765 from the Mughal Emperor at Delhi. The Regulating Act of 1773 (13 Geo. III Cap. 63) provided for the establishment of a Supreme Court consisting of a Chief Judge and Puisne Judges, all to be appointed by the Crown. It was followed by a Royal Charter, dated the 26th March, 1774, establishing such a court at Calcutta.

Retrograde
change in 1787 :

Events in the
mean time, follow-
ing the Regulating
Act of 1773.

Establishment of
the Supreme Court
of Judicature.

9. Clause 13 of this Charter (corresponding to Sections 14 and 16 of the Act itself), authorised the Supreme Court to try all actions and suits concerning trespass or injuries, or debts, or concerning any houses, lands or other real or personal property in Bengal, Behar or Orissa, brought against the East India Company, the Mayor and Alderman of Calcutta and "against any other of *our subjects* who shall be resident within the said provinces, districts or provinces called Bengal, Behar and Orissa, or who shall have resided there, or who shall have any debts, effects or estates, real

Jurisdiction of
the Supreme Court
as stated in the Act.

or personal within the same." The Supreme Court was also vested with jurisdiction to try any action or suit "against *every other person or persons* whatsoever, inhabitants of India, residing in the said Provinces * * upon any contract or agreement in writing entered into by way of the said inhabitants *with any of His Majesty's subjects* where the cause of action shall exceed rupees five hundred * * ."1

10. The Charter also gave the Supreme Court jurisdiction over "other persons who, either at the time of bringing the action or at the time the action accrued, was employed or was directly or indirectly in the service of the Company."

There was no express mention of the tribunals established by the Company's Regulations, or of the other subordinate offices exercising semi-judicial functions in the administration of revenue. The Judges of the Supreme Court thus refused to recognise that these Officers were protected by any "law" in their official acts, or that they were not liable to censorship by the Court for their conduct. In the Introduction (Chapter I), we have given a short description of the bitter conflicts which thus arose between the executive Government and the Supreme Court. For a time it seemed as if Government could not function. In a Minute, dated 29th September, 1780, Hastings observed that these conflicts had such alarming a tendency that they "foreboded the most dangerous consequences to the peace, and resources of the Government." It was

¹ The Supreme Court also constituted a Court of Equity (as the Court of Chancery in England) and had jurisdiction over ecclesiastical and marine matters. The Charter also provided for appointment of a Sheriff of Calcutta with authority to execute writs, etc., and orders, warrants and processes of the Supreme Court.

As for the jurisdiction of the Supreme Court in criminal matters see Chapter II, *ante*. See also Chapter XIII for a synopsis of the Act.



in this situation that, as a placating measure, he induced¹ his Council to appoint Sir Elijah Impey² as the President or Chief Judge of the *Sadar Dewany Adalat*, in addition to his duties as Chief Justice of the Supreme Court. Hitherto the Governor-General himself presided at the *Sadar Dewany Adalat*, and it was easy for Warren Hastings to argue that his other duties were too heavy for the onerous charge of the civil tribunal. This appointment was not, however, approved by the Court of Directors, and provoked much unpleasant aspersions which later on, formed one of the main charges³ in the impeachment of Sir Elijah Impey.⁴

11. However, Sir Elijah acted as Chief Justice of the *Sadar Dewany Adalat* till November, 1782, when the Governor-General resumed charge of the Court. Whatever may be said about the appointment of Sir Elijah Impey, it was a wise measure to have a person of legal eminence, to guide the newly created judiciary. The first act of Sir Elijah on the assumption of charge was to draw up a set of detailed rules of procedure for the guidance of the *Sadar* and the *Muffassil* Courts, in all stages of their proceedings. They were embodied in a Regulation containing 95 sections, and constituted what may be called the first Code of Civil Procedure in this country. In personal law, the rules in the *Koran* and the *Hadis* were to be followed for Muham-madans, and those of the *Shastras* for Hindus: but

The first Civil Procedure Code by Sir Elijah Impey.

¹ He carried by his own casting vote.

² His salary was Rs. 5,000 a month for this additional duty.

³ Another main charge was Sir Elijah's action in the trial of Nand Kumar and his execution.

⁴ The charge in the resolution of the House of Commons was that Sir Elijah, who had been appointed to the Supreme Court by the Crown, had "accepted an office granted by and tenable at the pleasure of the servants of the East India Company, which has a tendency to create a dependence in the said Supreme Court upon those whose transactions the Supreme Court was intended to control."

the broad rule of all substantive laws which he laid down was—"justice, equity and good conscience," a rule which is followed up to the present time in all cases where there is no express provision in Muhammadan or Hindu law. The rules in this Code were, with some modifications, embodied later in Regulations III to VI of 1793.

12. While Warren Hastings was trying to conciliate the Supreme Court by appointing Sir Elijah Impey as the Chief Judge of the *Sadar Dewany Adalat*, the Parliament in England, though condemning the appointment which looked like "bribing" the Chief Justice,

The Declaratory
Act of 1781.

proceeded to devise means by which the conflicts between the Company's judicial and executive arrangements and the Court, could be set at rest. The result was the Declaratory Act of 1781 (21 Geo. III, C. 70). By this Act, the *Sadar Dewany Adalat* and the subordinate courts established by the Governor-General and Council, were recognised; and provision was also made for appeals to His Majesty in civil cases, the value of which was £5,000 and upwards. The Supreme Court was thus debarred from interfering with the course of justice through the subordinate courts and the *Sadar Dewany Adalat* established by the Company. It was also debarred from trying cases concerning the revenues or concerning any acts done in the collection of revenue¹

¹ This last meant abrogation of an important aspect of the policy in the Act of 1773. There can be no doubt that the intention of the Act of 1773 was to establish a Judiciary in India, appointed by the Crown direct, which would be independent of the Company and would work as a check on the acts of the Company's officers, where improper or irregular. The public mind in England had at that time been greatly agitated by the many reports of abuse and high-handedness on the part of the Company's officers and their subordinates: and the Act was a part of the same course of action which had led to the appointment of the Parliamentary Committee of Secrecy to enquire into the affairs of the Company.

The objects of the policy in the Act of 1773 had, however, been to a great extent achieved. The conflicts with the Supreme Court and the unpleasant disclosures of abuses, had their lesson. The first was the set of Regulations which

(section 8); or concerning landowners, landholders or farmers of land as such (section 9); or concerning any person by reason of his being an employee or servant of the Company or of a British subject, *except* in respect of any dealing or contract in which such person might have agreed to submit to the jurisdiction of the Supreme Court (section 10). Subject to this exception, the jurisdiction of the Supreme Court regarding the native inhabitants was specifically confined to "all and singular the inhabitants of the city of Calcutta" only (section 17) (see Synopsis in Chapter XIII). Thus there were two judiciary, one the Supreme Court administering justice according to the English law¹ and procedure, but with restricted jurisdiction as mentioned above: and the other the *Sadar Dewany Adalat* and its subordinate Courts, administering the Hindu and Muhammadan laws according to the principles and procedure laid down by the Regulations of the Governor-General in Council. There was no further change by any Act of the Parliament during the rest of the period of the Company's administration: and it was thus that a double judiciary continued till as late as 1861. The Parliament's Act of this year (24 and 25 Vict. C. 104) and the Royal Charter issued thereunder provided for one High Court at Fort William. The High

were promulgated to control the conduct of officers: another was the restriction imposed at this time on the Company's officers engaging themselves in private trade. The Act of 1781 no doubt excluded acts of the Government in revenue matters from the jurisdiction of the Supreme Court: but the Company's courts could entertain cases of complaints. Further, by the Act of 1781, an appeal lay to the Privy Council, when the value was £5,000 and above. What remained in this respect was effected by Lord Cornwallis in his Regulations of 1793.

¹ There was an exception for the personal laws of the natives in respect of "inheritance and succession to lands, rents, and goods," in which cases the determination of the cause was to be "in case of Muhammadans, by the laws and usages of Muhammadans, and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Muhammadan or Gento, by the laws and usages of the defendant" (section 17).

Court at Calcutta which was thus established in July, 1862, is coming down to the present day.

(c) *Lord Cornwallis and Administration of Civil Justice*

13. Warren Hastings's scheme as finally developed in 1781, operated till 1787. This scheme, as we have

Judge, Magistrate
and Collector, com-
bined in one person :
1787.

seen (paragraphs 3 to 8 *ante*), contemplated complete separation of the administration of civil justice from the Collectors in charge of revenue administration. There was a reversal of this plan immediately after the arrival of Lord Cornwallis in 1787, and the offices of the Judge, Magistrate and Collector were combined in one person. It will, however, not be correct to attribute this to Lord Cornwallis ; for, as later events show, his own ideas were quite the opposite. But he had come with definite instructions from the Court of Directors, and had no option but to comply with those instructions. This change of policy was retrograde and contrary to British notions of State-administration ; but financial reasons outweighed all other considerations. The Company had got involved in the wars in other parts of India, and large sums of money were also required to meet the heavy deficits in Madras and Bombay : and although the revenue-receipts had almost doubled, the balances were dwindling, and the Company's credits in England were at this time at their lowest. Warren Hastings's scheme involved increased expense, and this, the Directors felt, they could not bear. There were also arguments of "simplicity" and that "people accustomed to despotic authority" would be better governed by "one master" than by a "multiplicity of authorities ;" but the main reason was financial.



14. A close perusal of the letter ¹ of the Court of Directors with which Lord Cornwallis brought the instructions, gives one the impression that its authors were not happy in their decision of abolition of independent Judges. They emphasised the need of securing the confidence of the people in the judiciary which was expected to mete out justice without bias and in accordance with the spirit and intention of the Parliament's Act of 1784. Judged in this light, the arguments for the amalgamation of the two functions (paragraphs 82 to 88 of the letter) were strained. There was a half-way direction that at the capital cities of Murshidabad, Patna and Dacca, separate Judges independent of the Collectors, might be appointed. At the head of the administration the Legislative and the Revenue Departments were directed to be kept separate, and they expressed the hope that the Governor-General and Council should give more time for "a very regular attendance upon the duties of the *Sadar Dewany Adalat*, so that speedy decisions might be formed upon all appeals, etc."

15. It was, therefore, not very difficult for Lord Cornwallis with his broad administrative outlook, to convince the Directors of the fallacy of the "one master" theory. His forceful arguments are summarised in the Preamble to Regulation II of 1793, which is still in the statute-book, and the spirit of which still operates. It was, according to his view, more necessary that the acts of the Collectors, and, by way of those, all acts of the "executive" authorities, should be amenable to an independent judiciary. "The revenue officers," he asserted, "must be deprived of judicial powers. All financial claims of the public, when disputed under the Regulations,

Judicial function⁸ separated, 1792-93, and separate Judges appointed in the districts.

¹ Letter, dated 12th April, 1786.

must be subjected to the Courts of Judicature, superintended by Judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants." What he felt strongly was that the prosperity of the people depended upon the security of their rights in property and the confidence they would have in that security; but there could be no such confidence unless the judiciary was independent of the executive and revenue authorities. The *Mal Adalats* of the Collectors in which suits relating to rent and tenancy matters, as well as complaints about assessment of revenue, were decided, were thus abolished; and a separate Judge was appointed in each zilla or district for the administration of civil (and also criminal) justice. Regulation III of 1793, next laid down detailed rules of procedure for the *Dewany* (Civil) Court of the Judge. The Preamble to this Regulation explained that the jurisdiction of the *Dewany* Court "shall extend not only to all suits between native individuals, but the officers of Government employed in the collection of revenue, the provision of the Company's investment, and all other financial or commercial concerns of the public, shall be amenable to the Courts, for acts done in their official capacity, in opposition to the Regulations; and Government itself, in superintending these various branches of the resources of the State, may be precluded from injuring private property, they have determined (that) the claims and interests of the public in such matters (were) to be decided by the Court of justice according to the same manner as rights of individuals."

Twenty-four Zilla Judges were thus appointed in the 24 districts into which Bengal and Behar were then divided. Corresponding to the Zilla Judges, three City Judges were

appointed in the three principal towns of Dacca, Murshidabad and Patna.

16. Sections 7 and 8 of Regulation III of 1793, laid down the jurisdiction of these Zilla and City Courts, in the following terms :—

Section 7 :—“ All natives and other persons not British subjects,¹ are amenable to the jurisdiction of the Zilla and City Courts.”

Section 8 :—“ The Zilla and City Courts respectively
 Their jurisdiction : are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land-rents, revenue, debts, accounts, contracts, partnerships, marriage, caste, claims to damages for injuries, and generally, all suits and complaints of a civil nature in which the defendant may come within any of the descriptions of power mentioned in section 7, * * * .”

By section 10 of the same Regulation, Collectors of revenue, their assistants and officers, commercial residents, and officers employed in the departments of Salt, Customs, Mint, etc.,—were all amenable to the jurisdiction of the Zilla and City Courts “ for any acts done in their official capacity in opposition to any Regulation.” Such suits
 Collectors and other officers amenable.
 Government to defend such cases. were, however, to be considered as suits against Government and would be defended by the “ *Vakeel* of Government in the Court ” (section 11).

¹ Natives of India were not yet claimed as “ British subjects.” British subjects, thus understood, residing beyond ten miles from Calcutta, might execute a bond rendering themselves amenable to the jurisdiction of these courts : and when they did so they were subject to their jurisdiction. If they did not, the Zilla and City Courts had jurisdiction not to allow such British subjects “ to reside or take up their abode within their respective zillas or cities,” the exception being for the King’s officers and the covenanted civil servants of the Company and their military officers : section 9 of Regulation III of 1793, read with Regulation XXVIII of 1793.

Regarding succession to landed property, section 13 of the Regulation, enjoined that in suits concerning right of inheritance to "a zemindary, *talook*, land, house or other real property," to which there are more claimants than one, the Hindu or Muhammadan law (respect being had to the religion of the claimants) " was to be followed for the determination of their shares. Section 15 of Regulation IV of 1793, expanded the same idea and laid down that " in suits regarding succession, inheritance, marriage and caste, and all religious institutions the Muhammadan law with respect to Muhammadans, and the Hindu law with respect to Hindus, are to be considered as general rules by which the Judges are to form their decisions." Where no such rules existed, section 21 of Regulation III, laid down that the Judges were " to act according to justice, equity and good conscience," as indicated in Regulation VI of the same year for the guidance of the *Sadar Dewany Adalat*.

17. The Judges of the Zilla and City Courts were appointed from the covenanted European servants of the Company, and each of these Courts had a Registrar, also a covenanted European officer, who was entrusted with the routine work of the Court and the office. The Judge, however, in order to obtain relief when there was congestion, might depute the Registrar of his Court to try and decide suits of which the value did not exceed Rs. 200. The decrees in such cases were, however, not valid unless countersigned by the Judge.

18. According to the rules previously in force, the decisions of the Zilla and City Judges were final for values up to Rs. 1,000. In cases above this value, an appeal lay direct in the *Sadar Dewany Adalat*. Parties living

Hindu and
Muhammadan laws,
regarding success-
ion, etc.

Judges and their
Registrars to be
covenanted Euro-
pean servants of the
Company.

Provincial Courts
of Appeal: four
established: their
functions.

in the interior of the country had thus to proceed to a great distance for prosecuting an appeal at Calcutta, and incur "a heavy and unlimited expense, in addition to the authorised charges." To obviate this difficulty four intermediate Courts, called the Provincial Courts of Appeal,¹ were established in the four grand divisions, with headquarters at Calcutta, Murshidabad, Dacca and Patna. Each of these Courts consisted of three Judges, all European covenanted servants of the Company. Regulation V of 1793, laid down the rules regarding constitution and jurisdiction of the Provincial Courts. Their function in civil matters was mainly appellate; but section 6 provided also for original trial by them of such cases as might be "transmitted to them for that purpose by the Governor-General in Council or by the *Sadar Dewany Adalat*."² An appeal lay to the Provincial Court from all orders, and of all decisions of the Zilla and City Judges, irrespective of their value.³ In cases valued up to Rs. 1,000⁴

¹ They also constituted the Courts of Circuit for criminal cases, *vide* Chapter II, *ante*.

This was, in one sense, a revival of the earlier Provincial Councils. The abolition of these Provincial Councils in 1781, was never supported by the Court of Directors. In their letter of 12th April, 1786, they adverted to their hasty abolition, and observed that it was "not done in consequence of our orders, or any previous approbation from us" (*vide* paragraph 8 of the letter).

² The only provision in this respect in Regulation VI of 1793 was section 5, which laid down that the *Sadar Dewany Adalat* might command a Provincial Court, to receive and hear an appeal which the latter might have summarily refused. It seems that a practice grew up later by which all cases of value above Rs. 5,000 were tried in the first instance by the Provincial Court: *vide* reference in the Preamble to Regulation XIII of 1808. Section 3 of this Regulation laid down that all cases of value above Rs. 5,000 would be tried in the first instance by the Provincial Courts and not the Zilla or City Courts.

³ Previously there was no appeal against the decision of the Zilla Judge in cases of value less than Rs. 1,000; and this, it was observed in the Preamble to Regulation V of 1793, affected a large number of people who were deprived of any means of redress by appeal to a superior authority.

⁴ For revenue-paying or rent-paying lands, one year's produce or receipt from rent, was taken as equivalent to this value: and in the case of *lakheraj*, ten years'.

the decision of the Provincial Court of Appeal was final : and in cases of value above this amount a second appeal lay to the *Sadar Dewany Adalat*. The Regulation also vested the Provincial Court with general power of superintendence over the Zilla and City Courts, for rectification of irregular acts of commission or omission, and in matters where there were allegations of corruption against the Judges of those Courts. Thus the Provincial Courts might receive complaints improperly refused by the lower Court and direct the latter to try them according to law.

19. We have seen that the Governor-General resumed charge of the presidentship of the *Sadar Dewany Adalat*. Regulation VI of 1793 laid down the constitution of this Court as consisting of the Governor-General and all the other members of the Supreme Council. Under this Regulation, the *Sadar Dewany Adalat* exercised general power of superintendence over the Provincial Courts, but its main function was appellate. Appeals lay to it against the decision of a Provincial Court, when the value of the property exceeded Rs. 1,000 : but Regulation IV of 1793 (section 4), contained a provision, rather curious, that if the plaintiff had asserted in his plaint that the cause was not an appealable one, and the defendant did not object in his answer (written statement), no appeal would lie.

Under section 29 of Regulation VI of 1793, the decrees of the *Sadar Dewany Adalat* were final in all suits whatever. By virtue, however, of section 21 of the Declaratory Act of 1781 (21 Geo. III, Cap. 70), an appeal lay to His Majesty in civil suits, the value of which was £5,000 or upwards.

Sadar Dewany Adalat.

—its appellate jurisdiction.

Appeals to Privy Council.

20. This was the general plan in Lord Cornwallis's scheme of Courts for civil justice. But below the Zilla and City Judges, there was another class of inferior agencies, called the Native Commissioners, appointed from amongst the inhabitants of the country. To quote from the Preamble to Regulation XL of 1793 :—

“ There being but one established tribunal in each zilla for the trial of causes, the parties in the most trivial suits, wherever they may reside, are obliged to repair in person to the place at which the Court is held, and to attend on it until the suit is decided. Besides the expenses and inconvenience necessarily resulting to the parties themselves from quitting their employments, and proceeding to a distance from their habitations, greater hardship is experienced by their witnesses * * * .”

To obviate these difficulties and bring justice nearer the homes of the people, the plan conceived in this Regulation was that for petty cases within certain monetary limits, the party might not have to go to a distance of more than 10 miles for a constituted agency where his cause would be tried.

A summary of the functions of these Native Commissioners is given in the Synopsis of this Regulation in the Appendix to this Chapter. Their powers were limited to cases of value not exceeding Rs. 50, and they acted in three capacities, viz.—

(1) as *Ameens* or Referees, reporting to the Judge after enquiry, on such cases within the above limit of value, as were referred to them by the Judge :

(2) as *Salishan* or Arbitrators, similarly submitting their awards to the Judge in cases in which both parties before the Judge agreed to have their dispute referred to such arbitration :

Functions of Native Commissioners :—as referees (*ameens* or *salishan*) and as *munsifs*.

(3) as *Munsifs* with power to try and decide civil disputes and claims within the above limit of value, which were referred to them by the Judge, or of which they took cognizance on complaints made to them direct.

The *Ameens* and *Salishan* were not judicial officers in any sense, but were only referees, on whose reports the Judge of the Zilla or City Court, adjudicated. They had no power to receive any complaint direct. As for "arbitration," another Regulation (Reg. XVI of 1793), authorised the Judge to refer suits of value up to Rs. 200 to one or more persons, if the parties in the suit agreed to such reference.

Those who were *Munsifs*, had the power to receive complaints direct and adjudicate upon them. They had, however, no power to execute their own orders, but had to submit all their proceedings to the Judge. Appeals against their decisions lay to the Judge in all cases, and a second appeal to the Provincial Court. An appeal also lay to the Provincial Court in all cases decided by the Judge on an *Ameen's* report: but no appeal lay when the decision was on an Arbitrator's award, except where corruption or gross partiality was alleged.

21. The *Munsif*-Commissioners were not, however, permanent officers, and did not constitute any service. The Regulations of 1793, did not lay down any pay or scale of remuneration for them. The power of *Munsif* was given only to selected Native Commissioners, the selection being made principally from amongst the zemindars, *talookdars*, and other landholders, their managers, *tehsildars* and so forth, and with jurisdiction expressly over their own under-renters, and the raiyats and cultivators in their respective estates.

22. The Regulation itself does not give any explanation for this plan of co-ordinating the landholders in the administration of civil justice. A point which strikes *prima facie*, is that while it was fully realised that "the proprietors (zemindars) can never consider the privileges which have been conferred upon them as secure, whilst

Propriety of judicial powers to zemindars discussed:

the Revenue-officers are vested with these judicial powers,"¹ still it was not considered objectionable to invest the zemindars with such powers over their tenantry. It is

true that the zemindars had been actually exercising such powers during the latter period of Mughal rule, but, as observed by Hastings, "it was not the constitution of Bengal during the well-administered period of the Mughal Government, that the zemindars presided over the courts of justice;" and this view was accepted as substantially correct in the Court of Directors' letter of 12th April, 1786. Apart from this, the Directors expressed also their objection to any plan which might imply that they were binding themselves to an obligation to vest the zemindars with judicial powers in civil matters.²

23. The reasons which nevertheless induced them to give judicial powers to zemindars over their tenantry, were the same as those for a number of other inconsistent

—same subject. provisions giving or rather continuing, drastic powers (such as for distraint without recourse to court), to the landholders in realising arrears of rent from their tenants. The revenue assessed on the

¹ Preamble to Regulation II of 1793.

² In paragraph 60 of their same letter of 12th April, 1786, they observed :—

"Although the judicial powers of a zemindar may under some limitation be productive of many salutary effects, we should hold it foreign from good policy, to grant to him, as a condition of his compact with Government, any jurisdiction that should be exclusive of the civil or criminal authority of the *Nazim* or of the East India Company acting as *Dewan* under the *Farman* of the Mughal."

zemindars was, in the conditions of the time, excessive, and Government had to assume summary powers of sale, while still retaining the other powers of sequestration and arrest. The idea which prevailed at the time was that unless the zemindars were placed in a position of authority over their tenantry, it could not be expected that they would be able to discharge the Government revenue punctually as required by the terms of the engagements with them. Considerations of revenue thus outweighed all other reasons. The plan of vesting zemindars and other landholdres, as such, with powers of *Munsifs*, was not given up, as we shall see later on, till 1803. In the Preamble to Regulation XLIX of this year, it was stated that "the powers of *Munsif* (to the zemindars, etc.) were chiefly intended for the assistance of the landholders and farmers of land in the recovery of arrears of rent from their under-tenants"; but as more drastic powers had since been given to them by Regulation VII of 1799 (the *haftam*), it was no longer necessary to confer on them judicial powers in other civil matters concerning their tenantry.

24. The Regulations of 1793, relating to administration of civil justice, were remarkably comprehensive; and elaborate rules of procedure, including the forms of records and periodical returns, were laid down for the guidance of the Zilla and City Judges, the Provincial Courts (as well as the *Sadar Dewany Adalat*). Section 3 of Regulation IV of 1793, laid down that "every complaint, answer, reply, and rejoinder, is to be written in the Persian or Bengali language and character,"¹ and the parties were permitted to deliver their pleadings in whatever of these languages and characters they might think proper.

Comprehensive
nature of the Regu-
lations of 1793.

Language.

¹ For Behar districts the language and character were to be Hindoostanee and Nagree.



25. No institution-fee was yet prescribed; but one feature of the procedure was that the first summons on the defendant was in the form of a writ requiring him to come forthwith with the officer serving the process or to furnish sufficient security to him for appearance on the due date. Even when the defendant came along with the officer, he was required to furnish security to the Judge for subsequent appearance. Failure to give security rendered the defendant liable to detention in civil custody.¹ This was in imitation of the procedure adopted in the Supreme Court, which again was an imitation of the English writ of "mesne process" which prevailed in those days. It really placed a defendant in a civil suit almost in the same category as an accused in a criminal case. This method of "mesne process," was, as observed by Sir James Stephen, "one of the worst and almost oppressive points of the law of England," and "its introduction in India was indefensible."² The rule of arrest on first process was abolished in 1806, but the rule of security was not abolished till 1814.³

Writ of 'mesne process' on defendant: security or civil detention :
 —borrowed from English law :
 —abolished in 1806-14.

26. There was no institution-fee, but Regulation II of 1793, required that before any process issued, the plaintiff was to furnish sufficient security for the costs including fees of the pleaders. Some discretion was given to the Judge in this respect by Regulation XLVI of 1793, and later by Regulation VI of 1797; but this rule was not abolished till 1814.

Security required from plaintiff :
 —abolished in 1814.

¹ The cost of such detention was to be borne in the first instance by the plaintiff: and eventually it was made part of the costs in the decree, according to result.

² These observations were made with reference to the manner in which this process was applied by the Supreme Court. But they apply equally to the plan adopted for the Company's courts in 1793.

³ See Synopsis of Regulations III of 1802, II of 1806 and XXIII of 1814, in the Appendix.

27. The doctrines of *res judicata* and *lis pendens* were recognised and embodied in the Regulations of 1793 ; but the rules regarding limitation of time for institution of suits were still vague. The rules regarding appeals were very liberal ; —but liberal rules of appeal. but there were not yet any clear rules regarding “ review ” or “ revision.”

28. Considerable latitude was allowed in the proceedings of the Native Commissioners, including those vested with the powers of a *Munsif* ; and a decision by them would not be set aside merely for want of form or irregularity in the procedure, but only on merits : Regulation XL of 1793.

29. The importance of Pleaders and *Vakeels*, and how they formed an integral part of every judiciary, if it were to command the confidence of the public, was well-recognised ; and one entire Regulation (Reg. VII of 1793) was devoted to this subject. The Preamble to this Regulation, while explaining the objects of the various provisions made in it, gave the following account of the previous methods of employment of persons to represent the causes of parties :—

“ In the Court of Civil Judicature in the British territories in Bengal, the parties in suits have hitherto had the option of pleading their cases in person, or appointing such *Vakeels* or agents for that purpose as they have thought proper. The generality of these *Vakeels* were either private servants or dependants of the parties deputed to plead the particular cause in which their employer was engaged ; or men who followed the business of a *Vakeel* to obtain a livelihood.”

The Preamble then proceeded to observe that most of these men were “ unacquainted with the constitution

and forms of the Courts," and were "consequently exposed to the intrigues of the ministerial officers" of the Court, while their remuneration not being fixed by any public Regulations, "their demands were frequently exorbitant." Instead of helping the Court or their own clients, they were thus an impediment to the course of justice, and a source of oppression on the parties. "It is therefore indispensably necessary," the Preamble continued, "for enabling the Courts duly to administer, and the suitors to obtain, justice, that the pleading of causes should be made a distinct profession; and that no persons should be admitted to plead in the Courts but men of character and education versed in the Muhammadan or Hindu law, and in the Regulations passed by the British Government; and that they be subjected to rules and restrictions calculated to secure to their clients a diligent and faithful discharge of their trusts."

30. The Regulation thus laid down that Pleaders competent to appear, would be appointed for all Courts by *Sanad*, by the *Sadar Dewany Adalat*. Such persons were to be selected from amongst the students of the Muhammadan College at Calcutta and the Hindu College at Benares.¹ In case sufficient number of men could not be had with these qualifications, appointment might be made from amongst persons who were of "good character and liberal education."

Penalties were laid down for misconduct or negligence² on the part of a Pleader. One striking provision in this Regulation was that the pleaders were forbidden to realise their fees or any present, direct from the party. The

Penalties for misconduct : scales of fee fixed.

¹ The Calcutta Madrasa was founded by Warren Hastings in 1782, and the Benares College was founded in 1791.

² These were specified along with their duties and responsibilities : see Synopsis,

scales of fee were laid down,¹ and the total amount would be included in the eventual decree, and when realised paid over to the Pleader. Any money or goods, etc., received by a Pleader directly from the party "besides the authorised fee," rendered the Pleader liable to dismissal. To ensure payment, there was a provision, curious as it would read to-day, that "no suit whatever shall be received in any Zilla or City Court, nor in any Provincial Court of Appeal, nor in the *Sadar Dewany Adalat*, until the complainant or appellant shall have given good security for the payment of the Pleaders whom he may employ."²

31. The same Regulation also provided for the appointment of a Government Pleader for Government cases, in all Courts. They were forbidden to advise or be concerned directly or indirectly on behalf of, the opponents of Government, but might otherwise take private cases. The scales of fees for the Government Pleaders, were the same as generally laid down for other Pleaders.

32. There was another important functionary, called the "Law Officers," attached to each Court. The Government Pleader represented the cause of Government in cases in which the Government was a party; and so the other Pleaders represented the cause of their respective clients. But the Judges were foreigners, yet unacquainted with the laws and customs of the country; and they needed the assistance of the advice of disinterested persons who knew about these laws and customs. Regulation XII of 1793, thus laid down rules for the appointment of

¹ For the scales of this fee, see Synopsis. To state generally, it was 5 per cent of the value up to Rs. 1,000 and then at gradually reduced rate till it was half per cent. when the value was over one lakh. The "retainer" fee was laid down at 4 annas only for a case.

² There was an obvious flaw in this plan: for, the defendants or respondents were excluded.

qualified Hindus and Muhammadans in the various courts who would expound the laws of their respective persuasions to the Judge. The *Kazis* and *Muftis* were included amongst Law Officers where the parties were Muhammadans.

33. The foregoing paragraphs summarise the scheme of reform in the administration of civil justice, inaugurated by Lord Cornwallis. It is important, because all subsequent developments during the Regulation period, were founded on this scheme; and in judging its merits and defects it has to be remembered that it was the first comprehensive scheme in which not only an almost complete Code of Civil Procedure was laid down, but a plan of "judiciary" in all its gradations down to the Native Commissioners in the interior, very much different from what had preceded, was devised in it. The thoroughness with which the authorities of the time dealt with the various aspects of the problems before them, cannot but evoke admiration: and there can be no doubt about their earnestness to establish a system by which impartial justice might be administered amongst all classes of people, rich and poor, so far as practicable in the circumstances of the time.

Some general observations on Lord Cornwallis's scheme.

(d) *Developments after 1793*

34. Lord Cornwallis's general policy of dissociating the judiciary from the officers of the executive Government, was not maintained in his constitution of the *Sadar Dewany Adalat*. Here the Judges were the same persons who formed the executive Government, viz., the Governor-General and all the members of his Council. Apart from the general objections to such combination of functions, the arrangement was clumsy and inconvenient.

Changes in the constitution of the *Sadar Dewany Adalat*.

The first move for a change was taken in 1801¹; but the policy of complete separation was not fully established till 1811. Regulation II of 1801, laid down that the *Sadar Dewany Adalat* (as also the *Sadar Nizamat Adalat*) was to consist of three Judges, the Chief Judge being one of the members of the Council (not the Governor-General or the Commander-in-Chief), and the other two Judges to be selected from amongst the covenanted civil servants of the Company with experience of judicial work in the Provincial Courts of Appeal. The policy of separating the judicial functions from the executive, was carried further within a few years. Regulation X of 1805, laid down that the Chief Judge of the *Sadar Dewany Adalat* was not to be a member of the Governor-General's executive or legislative Council, but a separate officer to be selected from amongst the experienced covenanted officers. But this provision was rescinded within two years; and by Regulation XV of 1807, the earlier plan of having a senior of the Governor-General's Council was reverted to. The reasons are not clear, the Preamble stating nothing further than that "it has been deemed advisable." The sounder policy of 1805 was, however, reverted to in 1811, by Regulation XII of that year. This Regulation omitted the provision that the Judge of the *Sadar Dewany Adalat* should be a member of the Governor-General's Council; and the qualification of a Judge, as laid down later by Regulation XXV of 1814, was that he must "have previously officiated

The Governor-General ceases to be in it, 1801 :

Complete separation in 1811-14.

¹ The Preamble to Regulation II of 1801, stated that it was "essential to the impartial, prompt and efficient administration of justice and to the permanent security of the persons and properties of the native inhabitants of the provinces, that the Governor-General in Council exercising the supreme legislative and executive authority of the State, should administer the judicial functions of Government by the means of Courts of Justice, distinct from the legislative and executive authority."

as Judge of a Provincial Court of Appeal or of a Court of Circuit for a period not being less than three years ;” or that he must “ have been previously employed in the judicial department, or in offices requiring the discharge of judicial functions, whether of a criminal or civil nature, for a total period not being less than nine years.” This arrangement remained in force during the rest of the Company’s period. The Regulation also provided that the Governor-General in Council might increase the number of Judges of the *Sadar Dewany Adalat* from time to time as might be deemed necessary.

35. The decisions of the *Sadar Dewany Adalat* were final under section 29 of Regulation VI of 1793 ; but

Appeal to Privy Council, when value £5000 or above.

under the statute of 1781 (21 Geo. III, Cap. 70, Section 21), an appeal lay to His Majesty in Council (the Privy Council)

when the value was £5,000 or above, equivalent to Rs. 50,000. Regulation XVI of 1797, laid down the rules of procedure for presenting petitions for such appeal through the *Sadar Dewany Adalat*. The period within which such

Sadar Dewany Adalat’s power to execute or suspend execution, pending disposal of appeal.

petition could be made was six months from the date on which the judgment was passed. This Regulation also empowered the *Sadar Dewany Adalat* either

to let its decree be executed, the decree-holder furnishing sufficient security, or to suspend the execution taking like security from the party left in possession of the property, pending the disposal of the appeal by the Privy Council.

36. Under Regulation VI of 1793, the functions of the *Sadar Dewany Adalat* were primarily appellate, and included general superintendence ; but it was also laid

Jurisdiction of the *Sadar Dewany Adalat*, primarily appellate :

down (Section 7), that “ in matters which

the *Sadar Dewany Adalat* may be empowered by any

Regulation to try in the first instance," the original trial —but empowered might be held by it. Regulation XXV also for original of 1814 (section 5) provided that the trials in certain cases. *Sadar Dewany Adalat* might take over from the Provincial Courts, such cases of value Rs. 50,000 and above, as it considered proper,¹ and hold the original trials.

37. Under the Regulations of 1793, "regular appeal" from the decrees of the Provincial Courts, Regular appeals to the *Sadar Dewany Adalat*, lay to the *Sadar Dewany Adalat* in all cases in which the value exceeded Rs. 1,000. The scope of such appeal was reduced by Regulation XII of 1797, which raised this money-limit to Rs. 5,000. The exact position was clarified later by Regulation XIII of 1808, which explained that cases of value below Rs. 5,000 would be tried in the Zilla and City Courts, and appeal to the Provincial Court would in such cases be final. Cases of value above Rs. 5,000 would be tried by the Provincial Courts, and appeal to the *Sadar Dewany Adalat* would be final except when the value was Rs. 50,000 or above, in which case there might be a second appeal to the Privy Council.

38. A provision was, however, made in the meantime in section 10 of Regulation II of 1805, Special Appeals. for "special appeal" in cases where a regular appeal did not lie, "if on the face of the decree, or from any information before the Court of Appeal, it shall appear to them erroneous or unjust, or if from the nature of the cases, as stated in the decree, or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal." Regulation XXVI of 1814, elaborated these rules to some extent, and Regulation IX of 1819, extended them generally to cases "showing

¹ The object stated however was to relieve the Provincial Courts, when there was pressure of business.

ground, from whatever cause, to presume a failure of justice." The inherent power of the Appellate Court to call for records was explained more fully later in Regulation IX of 1831.

39. Another provision was made in Regulation II of 1801, which empowered the *Sadar Dewany Adalat* to receive an appeal from an order or dismissal of the Provincial Court, where that Court might have refused to admit an appeal preferred before it, "on the ground of delay, informality or other default in preferring it; or after having admitted the appeal, may dismiss it on the ground of some default, without investigation of the cause." Detailed rules of procedure were laid down for this kind of appeals, called "summary appeals," in Regulations XXVI of 1814 and IX of 1831.

40. The necessity of some provision for "review" of a judgment or decree to rectify palpable errors or when new matter or evidence which was not within knowledge at the time of trial, came to light, was felt very early, and several Regulations¹ laid down rules for review where appeals did not lie or were time-barred.

Sadar Dewany Adalat's power to sanction "review" :

But there was considerable hesitancy to give the power of rectification to the original Court. A reference to the *Sadar Dewany Adalat* was necessary for final orders. Section 4 of Regulation XXVI of 1814, explained that references in all cases of review whether in the Court of the Zilla and City Judge or the Provincial Court, would be made direct to the *Sadar Dewany Adalat*. The *Sadar Dewany Adalat* had also the power to review its own judgment or order. A petition for review from a party in a case in which there was no appeal, might be admitted, when from the discovery

¹ Reg. II of 1798, sections 2 and 3; Reg. II of 1803, section 30(2); Reg. V of 1803, section 37; Reg. III of 1813, and Reg. XXVI of 1814.

of new matter or evidence which was not within his knowledge or could not be adduced by him at the time when the decree was passed, or there was any other good and sufficient reason for a review. A sanction to review or refusal of such sanction, did not, however, —or to direct "revision." preclude the party from preferring an appeal, if the case was an appealable one.

The rules were elaborated later in Regulation IX of 1829, in which it was further provided that the *Sadar Dewany Adalat* might issue injunction on the lower court to revise its own decision, when the decision appeared to the *Sadar Dewany Adalat* to be manifestly unjust or at variance with the provisions in the Regulations in force or in opposition to the Hindu or Muhammadan law applicable in the case.

41. The brief account in the foregoing paragraphs indicates how various miscellaneous functions of the *Sadar Dewany Adalat* gradually developed and Single Judge— powers of. were treated in the Regulations passed from time to time. The question of vesting a single Judge with powers to deal with appeals and other matters, arose in 1810. The previous Regulations required that at least two Judges should sit together to hear a matter. Regulation XIII of 1810 provided that a single Judge might hear an appeal or other matter, but if he considered it necessary to reverse or alter the lower Court's decision he was to submit the case to a Bench of two or more Judges. These rules were modified from time to time by several Regulations,¹ and ultimately by Regulation IX of 1831 (sections 2 and 3, explained by Regulation VII of 1832) much larger powers were given to a single Judge in reversing or altering a decision of the lower Court without reference to a Bench of Judges.

¹ Reg. XIII of 1810, sections 6 and 8; Reg. IX of 1819, section 5; Reg. II of 1825, section 4.

42. The Provincial Courts of Appeal as first constituted (*vide* paragraph 19 *ante*), consisted of three Judges each, and under Regulations XLVII of 1793 and III of 1793, two of them were required to sit together to constitute a Court. The number of Judges was increased to four for the Dacca Provincial Court in 1802, and later for the other Provincial Courts by Regulation I of 1826. In the meantime, certain powers were given to a single Judge by Regulation XIII of 1810, similar to the powers given to a single Judge of the *Sadar Dewany Adalat*. The money-value of cases appealable from the decisions of the Provincial Courts was raised to Rs. 5,000 by Regulation XII of 1797 : original jurisdiction of the Provincial Courts was defined later in Regulation XXV of 1814. This Regulation laid down that all cases of values above Rs. 5,000 were to be tried in the first instance by the Provincial Courts, and not the Zilla and City Judges. It is interesting to note that although the jurisdiction of the Zilla and City Judges was thus restricted, by a Regulation of 1817 (Reg. XIX), they were empowered to receive complaints of values between Rs. 5,000 and Rs. 10,000, on behalf of the Provincial Court, and then transmit them to the latter Court for trial. The Regulation of 1814, also laid down the qualification of a Judge of the Provincial Court as employment as a Zilla or City Judge for not less than three years, or employment in other offices requiring discharge of judicial functions for a period of not less than six years.

We shall see in the next paragraphs how throughout this period, larger judicial powers were gradually conferred on the inferior agencies of *Sadar Ameens* and *Munsifs*, and how the Zilla and City Judges themselves became more largely a Court of appeal. Eventually the importance of the Provincial Courts ceased, and they were abolished under

—abolished under
Reg. II of 1833.

the powers given to the Governor-General by Regulation II of 1833.

43. The history of the civil tribunals in the districts, is a history of gradual extension of powers to native agencies, and ultimate recognition of their competency for this branch of the administration. There was no change of importance in the personnel of the Zilla and City Courts, except that by Regulation XLIX of 1803 Assistant Judges were permitted to be employed with powers similar to those of the Zilla or City Judge. The Registrars of the district courts were given judicial powers in 1793, up to a value of Rs. 200. Appeals from their decisions lay to the Zilla and City Judge (Reg. XXXVI of 1795). By Regulation XLIX of 1803, the powers of the Registrars were extended to cases of value up to Rs. 500, and a second appeal to the Provincial Court lay where the value was above Rs. 100. In the mean time, in 1800, the Registrars were authorised to hear appeals from the decision of Native Commissioners. One noticeable feature in the employment of Registrars on judicial work is that they were paid commissions at certain rates in addition to their usual salary as covenanted officers of the Company. A fixed salary was substituted only as late as 1821, by Regulation II of that year. The Registrars' Courts were, however, practically abolished by the changes introduced by Regulation VII of 1831, by which section 2 of Regulation VIII of 1794, which authorised reference of civil suits to Registrars, was repealed.

44. We have seen that under the Regulations in 1793, selected Native Commissioners were called "*Munsifs*," and in this capacity they were vested with powers to receive, try and decide cases of value up to Rs. 50. The selection was made mainly from zemindars, other landholders

Munsif-Commissioner :



and their more responsible officers. The primary object then was to secure for them a position of authority in which they might enforce payment of rent by their tenantry, so that they themselves might in their turn pay the Government revenue with punctuality. It seems that their services were at first expected to be "honorary"; at any rate the Government did not bear any expense on account of their employment. When a system of fees for institution of civil suits was introduced in 1795, it was laid down that these *Munsifs* would appropriate the fees in the cases tried by them, "as a compensation for their trouble, and an indemnification of the expense which they may incur in the execution of the office." They did not form a regular service, and it will be only hazarding a conjecture to estimate what an individual "*Zemindar-Munsif*" received, and what the total cost¹ on this account amounted to. The remuneration was one anna per rupee² of the value of the cases disposed of by them.

—why zemindars.

Not a salaried service: but paid from institution-fees.

45. However, Regulation XLIX of 1803, laid down that the appointment of Native Commissioners as *Munsifs* was not to be restricted to zemindars and landholders, but should be given to persons of known ability and education. The reason for this change of policy, as stated in the Preamble, was that such powers for the zemindars and other landholders was at first "chiefly intended for assist-

Zemindars eliminated in 1803: reason.

¹ The statistics given by the Judge-Magistrate of Burdwan, for 1802, show an annual disposal of 10,531 cases by the Native Commissioners, including those with powers of *Munsif*. Assuming that the average value of a case was Rs. 25, and that half the number of cases were disposed of by those functioning as *Munsifs*, the total remuneration was about Rs. 8,400 or Rs. 700 per month including the establishment, for all the *Munsifs*.

² This was the rate of fee for cases of value up to Rs. 50. Native Commissioners who acted as only *Amcens* or *Salishan* were allowed half this rate by Regulation VI of 1797.

ance * * * in the recovery of rent from their tenantry," but Regulation VII of 1799 (the *haftam*) having since given them wider and more directly effective powers, the indirect authority over the tenantry with judicial power over their other kinds of civil disputes, was no longer necessary.

46. The same Regulation XLIX of 1803, also provided for the employment of a Native Commissioner at the headquarters of the district with judicial powers to try cases up to a value of Rs. 100 which might be referred to them by the Zilla or City Judge. They were denominated *Sadar Ameens*, later abbreviated to *Sadar-Ala*, a term which is used still, in common parlance, to mean the Subordinate Judges of the present day. *Sadar Ameens* (called also "Head Native Commissioners") were "carefully" selected from persons of good character, known ability, education and past employments. They did not, however, form a salaried service, but were remunerated with a commission of one anna per rupee of the value of each case actually tried on contest (*i.e.*, not *ex parte*) and adjudicated upon by them. Provision was also made that the *Munsifs* and *Sadar Ameens* should hold their courts in open *katcharies* at fixed places.

47. The trend of legislation henceforth was to form a class of native judiciary, independent of zemindars and landholders, with gradually increasing powers. The jurisdiction of the *Munsif-Commissioners* was extended to cases of value up to Rs. 64 in 1814 (Reg. XXIII), and then to Rs. 150 in 1821 (Reg. II), and ultimately to Rs. 300 in 1831 (Reg. V). In the last year, *viz.*, 1831, monthly salary was fixed for them; but up to that time they were remunerated with the institution-fees actually received on cases tried by them.

The *Sadar Ameens* in 1803 :

—not a salaried service at first.

Munsif-Commissioner's powers extended from time to time :

—salary fixed in 1831.

48. The jurisdiction of the *Sadar Ameens* was raised to cases of Rs. 150 in 1814 (Reg. XXIII), then to Rs. 500 in 1821 (Reg. II), and to Rs. 1,000 in 1827 (Reg. IV). A monthly salary, instead of the institution-fee, was fixed for their remuneration by Regulation XIII of 1824. The services of *Sadar Ameens* thus began to be very largely used for the disposal of civil cases, and several such officers were employed at the headquarters of important districts. The final measure taken was in 1831. By Regulation V of this year the "Principal *Sadar Ameen*" in a district was empowered to try cases up to a value of Rs. 5,000.¹

49. These rapid measures for employment of the inhabitants of the country to more responsible offices than those of the ministerial staff of the courts, were apparently part of the new policy adopted from the time of Lord Hastings, and definitely recommended in the report of the Parliamentary Committee of 1822.² The gradual extension of judicial powers to *Munsif*-Commissioners and other native officers, necessitated modification of the previous rules according to which no special formality was required for the proceedings of Native Commissioners. The revised rules of procedure for the *Munsif*-Commissioners were consolidated in Regulation XXIII of 1814, which also laid down certain special local rules for Cuttack and Chittagong. They were expanded in the subsequent Regulations already referred to, as their powers were extended from time to time. Appeals from the decisions of the *Munsifs* and *Sadar Ameens* lay to the Zilla or City Judge, and were

¹ Cases of a European British subject, or a European foreigner, or an American, were excluded from the jurisdiction of Principal *Sadar Ameens* as from the jurisdiction of *Sadar Ameens* and *Munsifs*.

² We will see in Chapter V how owing to operations for the settlements under Regulations VII of 1822 and IX of 1825, natives were appointed in responsible

final there up to the value of Rs. 1,000. Certain appellate powers over the decisions of *Munsif-Commissioners* were also given to the *Sadar Ameens* and Principal *Sadar Ameens*.

50. The restrictions on *Vakeels* and Pleaders, not to receive any amount from the parties in excess of the authorised fees, continued to be in force practically throughout the Regulation period. The scales were revised by Regulation V of 1798, and later consolidated in Regulation XXVIII of 1814. This latter Regulation did away with the requirement of security from the party for the Pleader's fees. But the most important provision in this Regulation was that in nominating *Vakeels*, the Zilla and City Judges were to give preference to candidates educated in any of the Muhammadan or Hindu Colleges, established or supported by the Government. A public examination was introduced in 1826, and persons qualified on such examination were authorised to practise in any district in the Province. The final measure was Regulation XII of 1833. By this Regulation Pleaders and *Vakeels* were left free to settle their remuneration with the parties¹; and only the scales of fees which could be included in the decrees as costs, were laid down.

51. Law Officers attached to the Zilla and City Courts, originally intended as impartial advisers to the Judge on matters of Hindu or Muhammadan Law, were gradually merged into *Sadar Ameens* (*vide* Regulations XV of 1805 and XXIII of 1814). Regulation XI of 1826, which laid down a public examination for *Vakeels*, provided also for special examination for appointment as Law Officers. It also

offices, later called Deputy Collectorships. Judicial powers for criminal cases were not, however, conceded till 1843.

¹⁰ But the amounts had to be stated in the *Vakalatnamas*.

laid down that such an officer need not necessarily be a Hindu or a Muhammadan, but might be a person of any other religious persuasion.

52. The Judges of the Zilla and City Courts and the Provincial Courts of Appeal were, as already noticed, appointed from the covenanted civil servants of the Company. The Charter Act of 1793, enjoined that the members of the Governor-General's Council were to be taken from amongst these civil servants.¹ The need for a preliminary legal training for them was felt very soon; and in 1800, a College was established at Fort William, which amongst other matters provided for a study by all young civilians of the Indian languages, Muhammadan and Hindu Laws, English Law and the Regulations.² The Court of Directors did not quite approve this plan, and in 1805, they established a College of their own, at Haileybury near Hertford, at which nominees for the civil service were required to undergo a 'two years' course of special training before proceeding to India. In consequence, the course of further training at Lord Wellesley's College at Fort William, was curtailed in 1807, and eventually this College was abolished by Regulation XX of 1814.

Preliminary legal training of the Judges: College at Fort William: abolished after the College at Haileybury.

(e) General

53. One main reason for the conflicts with the Supreme Court during the years 1773 to 1781, was that the Judges

¹ This was a "precaution against jobbery" in appointments which, it was believed, prevailed previously. The vicious feature of the previous methods was the latitude given to the officers to have their own private trade and speculations in India, while the salary paid was insignificant. In pursuance of the Charter Act in 1793, all these civil servants had to enter into a "covenant" by which they bound themselves not to trade, not to receive presents, to subscribe for pensions and so forth: and hence the term "covenanted."

² Regulation IX of 1800. The period of study, was three years, with four terms each year, of two months each.

of this Court frequently interfered with the acts of the executive authorities in enforcing payment of public demands according to the practice then in force. When this interference ceased, the regulation of the conduct of revenue-officers was left in the hands of the Governor-General and his Council. A series of Regulations were thus promulgated laying down the methods and the procedure which the officers in the various departments, such as Land Revenue, Customs, Salt, Opium and Excise, were to follow. Regulation II of 1793, explained that any deviation from these provisions was liable to action by individuals in the *Dewany Adalat* and other Courts established by the Company's Regulations. Another important provision in this Regulation was that demands or exactions of revenue in excess of the amounts agreed with the parties, or properly assessed according to the rules in the various Regulations, were also amenable to action in the ordinary Civil Courts. Otherwise, the executive authorities had full powers to enforce all kinds of coercive measures permitted by the Regulations, for the realisation of public demands, without recourse to the *Dewany Adalat*; and so long they did not infringe those Regulations they were protected.

54. In the case of land-revenue, such permissible measures extended to arrest and confinement of the defaulter or his surety, temporary sequestration of his property or final sale of the estate in arrears or any portion of it.¹ Regulation XVI of 1793, gave jurisdiction to the *Dewany Adalat* (on complaint by the party) to "prosecute" the Collector for "false imprisonment, and paying

Revenue-suits up to 1793.

Jurisdiction of the *Dewany Adalat*, in cases of infringing the Regulations.

Jurisdiction of civil courts in cases of irregular revenue processes.

¹ See Chapter V *post*, on Land Revenue.

such damage as the Court may award against him " in case a defaulter was confined without service of a demand-notice for payment of the arrear within a certain time and the arrear was not paid by that time. The same rule applied with regard to arrest and confinement of a surety for such payment. The Regulation also gave jurisdiction to the *Dewany Adalat* to receive and try complaints against the Collector for demanding or exacting a larger sum than was properly due. But its jurisdiction in cases of irregular sequestration or sale¹ of an estate was not made clear till Regulation XI of 1822 : see paragraph 11 of Chapter V *post*.

55. The question of better defining the jurisdiction of the Civil Courts in revenue matters, became important when with the passing of Regulations II of 1819 and XI of 1825, extensive proceedings for the resumption and settlement of invalid *lakheraj* lands, *chars* formed in the beds of rivers, and of large tracts of waste and jungle lands (as the Sundarbans) situated outside the limits of permanently settled estates,

Extensive re-
sumption proceed-
ings after 1819
necessitated better
defining of the juris-
diction of the Civil
Courts.

¹ In the Ceded and Conquered Provinces, particularly in the districts of Allahabad, Cawnpore and Guruckpur, abuses of the sale law and fraudulent purchases, became frequent; and as the estates were generally small the proprietors were not in a position to contest by regular suit in the Civil Court. Regulation I of 1821, thus provided for the appointment of a semi-judicial functionary in these tracts, called " Muffassil Special Commissioners," with power to take cognizance (to the exclusion of the ordinary Civil Courts) of—" claims to recover possession of land * * * * * which may have been lost through public sale in liquidation of arrears of revenue," and also to private transfers believed to have been effected under " undue influence of a public officer," and even private purchases or acquisition of land believed to have been effected " by violence, extortion or oppression " apart from any influence of a Government officer. An appeal lay against the decision of Muffassil Special Commissioners to the Sadar Special Commissioners, where it was final, unless the value exceeded Rs. 50,000, in which case an appeal lay to the Privy Council. The provisions were expanded by Regulations I of 1821 and IV of 1826; and eventually these Special Commissioners were abolished by Regulation I of 1829, when their functions merged in the Commissioners of Revenue, then established, and the Sadar Board of Revenue.

were commenced.¹ Regulation IX of 1825 extended, with some modifications, the provisions of Regulation VII of 1822,

No jurisdiction as regards amount of assessment : to the districts of Bengal, Behar and Orissa ; and according to these Regulations (as also the previous Regulations), the Revenue

Authorities were the final arbiters as regards the *amount* of assessment. The most effective means of enforcing their

—but jurisdiction on the substantive question of liability or non-liability. decision was that if the proprietor refused to agree, the Collector was at liberty to settle the land for a time with an outsider or hold it under direct management. The substan-

tive question as to whether the particular land was at all liable to assessment, was distinct ; and these Regulations, as well as the Regulations of 1793, provided that if this substantial question was disputed, it would be decided by the *Dewany Adalat*. At first the onus of preferring a case before

the *Adalat* was on the Revenue Authorities, before they could enforce their assessment. The Preamble to Regulation XIX

of 1793 declared that no such lands (claimed as *lakheraj*) "may be subjected to the payment of revenue until the titles of the proprietor shall have been adjudged invalid on a final judicial decree " by the Civil Court. Section 12 then laid down that "it is to be the duty of the Collectors, after receiving the sanction of the Board of Revenue * * * to prosecute in the Court of the *Dewany Adalat* on behalf of Government." Similar provision was made in section 7 of Regulation XXXVII of 1793 with regard to lands claimed as *Badshahee lakheraj*. These provisions

Plan reversed in 1819 : suit to be by party. were gradually repealed for some districts by Regulation V of 1813, and for some others by Regulations XI and XXIII of 1817 ; and finally by Regulation II of 1819. This

¹ For a fuller account of these settlements after 1793, the reader is referred to Chapter XII of " Land System of Bengal."

last Regulation reversed the plan of prosecution in the Civil Court. Once the Revenue Authorities thought that the land was liable to assessment of revenue, and assessed it as such, it was left to the private individual, if he so wished, to institute a suit in the *Dewany Adalat* for an adjudication on the question of liability or otherwise of the land to assessment. This applied to cases of *lakheraj* claims, cases of assessment of other lands supposed to be outside the limits of permanently settled estates, and also *chars* (alluvial formations) in the beds of rivers.

56. The provisions of Regulation II of 1819 (which apply to the present time also), maintaining the jurisdiction of the Civil Courts, continued to be in force, except during the period when under the authority given by Regulation III of 1828, the Governor-General in Council appointed a class of semi-judicial officers called "Special Commissioners," or more commonly "Resumption Commissioners." In the Preamble to this Regulation it was explained that the intention in the previous Regulations was that the suits in the Civil Courts regarding liability to assessment were to be of the nature of "appeals" against the decisions of the Revenue Authorities. The Courts, however, treated them as original suits, and consequently there was heavy accumulation of arrears. The Regulation thus sought to take away the jurisdiction in such cases from the *Dewany Adalat*, and transfer it to the Collector, subject to appeal to the newly created class of officers called "Special Commissioners." Section 4 of the Regulation first laid down that the decision of the Collector on the question of liability to assessment would have "the force and effect of a decree." The same section next laid down that the party, if he felt aggrieved, might prefer an appeal to the Special Commissioner against the Collector's decision, but not to the ordinary Civil Court ;

Radical change in 1828 : jurisdiction transferred to Special Commissioners.

nor would any separate suit lie in such Civil Court. The jurisdiction of the *Dewany Adalats* was thus ousted in all such cases, and it was simultaneously directed that cases then pending before the Civil Courts should be forthwith transferred to the Special Commissioners. The decision of the Special Commissioners was "final," except in cases which, if decided by the *Sadar Dewany Adalat*, would be appealable to the Privy Council. In such cases similar appeal would lie to His Majesty in Council direct from the Special Commissioners. The functions of these Special Commissioners gradually merged, with modifications, in the Commissioners of Revenue; but the provisions in Regulation III of 1828 (sections 2 to 8) were not formally repealed till the Repealing Act I of 1903.

57. We have noticed that the Rent-Courts of the Collectors (called *Mal Adalats*), where all suits relating to rent payable by a tenant to the zemindar or his under-

Rent-suits : renter, used to be tried, were abolished by Regulation II of 1793. Section 8 of

Regulation III of 1793 simultaneously gave jurisdiction to the Zilla and City Courts for all suits relating to "land-rents * * * debts, accounts, etc." But by far the

bulk of the tenantry, particularly the peasant class, was not touched by this provision. Regulation XVII of 1793, though prohibiting "confinement," retained the powers of the zemindars and other landholders to seize the crops

and other moveables of a defaulting raiyat without recourse to any Court or Collector. —restricted by the zemindar's power of distraint.

Certain restrictions were laid down before the articles seized could be sold, and there was also provision for suit by the raiyat in case of improper distraint. But from the nature of the relation between the parties, these could not possibly be of much avail to the poorer classes. It was more so, where the zemindar or the landlord was vested with the powers of a *Munsif* to receive and adjudicate

upon other kinds of civil complaints amongst their tenantry. The prevailing idea of the time was that unless the zemindars were placed in a position of authority over their tenantry, they could not be expected to pay with punctuality the public revenue assessed upon them. The authorities were extremely nervous; for they knew that the revenue assessed upon the zemindars was excessive, and very little margin was left above the rental derived from the tenantry. The effect of these provisions was that only the intermediate landholders, and perhaps some of the bolder persons amongst the raiyats, availed themselves of these provisions of rent-suits in the *Dewany Adalat*. Some of them were extremely litigious, and where their tenures bore a large amount as rent, they could put the zemindar under considerable embarrassment. The authorities were alarmed, and when they found that large numbers of estates were being thrown into auction-sale for arrears of revenue, they proceeded to pass several Regulations which gave more drastic powers to the zemindars. The most important of them was

More drastic powers given to zemindars by Regulation VII of 1799.

Regulation VII of 1799, the notorious *haftam*. It gave greater power to them to seize and sell the crops and other moveables of the tenant without recourse to Court, and further enjoined the Police and other public officers to help them in their acts of distraint. Even if there was any justification for such a measure from the point of view of public revenue, there was no need of perpetuating it when cultivation had extended materially and the rental assets left a fair margin of profit to the zemindar. The *haftam*, however, remained to sully the statute-book throughout the Company's period of administration.

58. Of a much less objectionable character was Regulation VIII of 1819, known as the *Patni* Regulation.

But it purported to freeze the normal procedure of the Civil Court of an adjudication prior to any sale of property. When the zemindar had served the required notices on a defaulting *Patnidar*, the Judge or his Registrar or the Magistrate might forthwith put the *Patni* tenure to sale at a public auction.

Summary sale of *Patni* tenures for arrears of rent.

59. But this was only the commencement of a new policy of transferring summary trials of rent-suits, reversing the policy avowed by Lord Cornwallis. As early as 1794, the year after Lord Cornwallis left, a Regulation (Reg. VIII) was passed authorising the Civil Courts to refer to the Collectors cases of rent-claims, in which an examination of accounts and adjustment were involved. The final adjudication and execution, however, lay with the Court on receipt of the Collector's report. The same plan was continued in Regulation VII of 1797 (section 15) and Regulation V of 1812 (section 21), the latter Regulation making such reference imperative in every case. This obligation to refer in every case was removed by the provisions in Regulation XIX of 1817, the reason then stated being

System of reference to Collectors in rent-suits.

that such reference often caused delay instead of expedition. But very shortly after ideas changed, and a solution of the problem of expediting disposal of rent-suits was sought in the other way round. Regulation XIV of 1824 laid down that the Collectors would try summarily and "determine" finally all such suits as might be referred to them, only the execution was reserved in the hands of the Civil Court. The next step taken was in 1831.

Finally, power to "determine" given to Collector, subject to regular suit in the Civil Court.

Regulation VIII of this year laid down that "all summary claims connected with arrears or exactions of rent shall be preferred in the first instance to the several Collectors of land revenue, whose decision in such



cases shall be final, subject to a regular suit, unless the ground of appeal be relevancy of the Regulation to the case appealed, on which ground only the Commissioner of Revenue for the Division is authorised to receive the appeal " (section 4). And to encourage parties to this course, the court-fee for such claim-cases was reduced to one-fourth (section 8). Thus the policy of Lord Cornwallis was completely reversed, and the *Mal Adalat* was in effect restored so far as regards rent-suits. It was, however, intended that these summary suits before the Collector would be restricted to enforcing payments of the rents at the rates paid in the previous years, to the entire exclusion of all claims to increase, except on proof of *bona fide* written engagements to increase.

Thus the jurisdiction of the Civil Court was restricted only to cases where a regular rent-suit was instituted against the "award" of the Collector, or where an enhancement, not already agreed to by the tenant, was claimed. This was the position during the rest of the Company's period.¹

60. The most important of the substantive laws in the Regulations were those relating to rights in land. There was so much vagueness about the position of different classes of persons holding or occupying land, that any machinery for the protection of their rights would have been meaningless unless such rights were defined and made intelligible. Lord Cornwallis's clear view was that the prosperity of the country, and its revival from the effects of the famines and misrule which had preceded, depended entirely upon how far the people were assured

Substantive law
regarding land.

¹ The next legislation was Act X of 1859. This Act effected a complete transference of jurisdiction in all matters relating to rent, enhancement and incidence of tenancies, to the Collector. The policy was reversed by Act VIII of 1885, when the jurisdiction of the Civil Court was restored. For a fuller account, see Chapter X, "Land System of Bengal."

of a substantial right in the lands they held, whether as zemindars, *talookdars* or raiyats.

It was thus first declared that the zemindars and other persons with whom lands would be settled direct by the Government, were to be considered as "proprietors"¹

The zemindars, with full and free right to transfer by sale, gift or otherwise whole or any portion of their estate; and on their death their property would pass to their heirs (subject to any Will they might have made) according to their personal laws of inheritance (Regulation I of 1793). It followed that they would, in their turn, be bound by their own terms in any lease or

The *talookdars*, mortgage or the like: and it was on this basis that the rights of *talookdars* (i.e., intermediate under-renters) and farmers under them were defined.² The same principle was sought to be applied to the existing resident raiyats, who were primarily actual

The raiyats, cultivators; and the zemindars, *talookdars* and farmers were enjoined to grant them written *pattas* which would ensure the permanency of their holdings.³ The law regarding new raiyats who would be inducted on lands then untenanted, was at first vague. Regulation IV of 1794 laid down that if such raiyats desired to continue to hold the land beyond ten years, or any shorter term for which they might have engaged, they must pay rent at the established *pargana* rate at the time. Their occupancy right was not secured till by

¹ For a discussion of the meaning of this term, the reader may see Chapter IX, "Land System of Bengal."

² For an account of various kinds of *talookdars* and how their rights were secured, see Chapter XI, "Land System of Bengal."

³ See Chapter X, "Land System of Bengal." It may be mentioned that under-raiyats, or the fluctuating class of people who helped the raiyats in the cultivation of land, were ignored. Many raiyats held large areas, as much as 30 or 40 acres or more, and could hardly cultivate all the lands by themselves. See also page 241, Chapter XI, "Land System of Bengal."

Regulation XI of 1822.¹ One important provision made in Regulation VIII of 1793 (section 56) was that where the rent was fixed at a specific sum, the raiyat was at liberty to cultivate whatever species of produce he liked.²

61. The Proclamation of the Permanent Settlement reserved the right of Government to promulgate laws for the protection of the tenantry : but it is not a happy story to tell that throughout the Regulation period practically nothing was done in this direction. The plan of *pattas* to raiyats, and the plan of *Patwaris* or village-accountants keeping rent-accounts, and liable to control by the Collector, were allowed to lapse ; while no measure was taken to clarify the rules regarding enhancement of rent. On the other hand whatever benefits of security of tenure were conferred by the other Regulations, were to a large extent marred by the provisions of section 5 of Regulation XLIV of 1793. This section laid down that in the event of a sale of an estate or part of an estate for arrears of revenue all subordinate interests, including those of the raiyats, would automatically stand cancelled. However such a provision might have been justified in the interest of public revenue, for *talooks* created after the Permanent Settlement, its application to raiyats existing from before that Settlement, or to *bona fide* cultivators after that time, was unconscionable.³ Regulation XI of 1822 protected the former class of raiyats, but the position as regards

Security of tenure
disturbed by revenue-sales.

¹ For a fuller discussion, see Chapter X, " Land System of Bengal," *ibid.* Also the Great Rent Case, *Thakooranee Dossee vs. Bisheshor Mukherji*, F.B. (1865), 3 W.R., Act X Rulings, p. 20, per Trevor J., at p. 35, etc.

² Variations of rent according to the kind of crop grown were not altogether ruled out where such custom prevailed. Such custom prevailed mainly in the Behar districts and the adjoining districts of Bengal as Malda.

³ The mischief probably was not as great as might otherwise be apprehended : for, in the earlier period, there were more lands than men to cultivate, and a purchaser at a revenue-sale could hardly afford to disturb those who were already on the land. See Chapters X, " Land System of Bengal."

the others was still unsatisfactory. In the mean time, and throughout the Company's period, claims for enhancement of rent were a vexed question before the Civil Courts, which had to act without any much helpful guidance from the Regulations.

62. In matters relating to succession, inheritance, marriage, etc., the general principle that the personal law of the party, Hindu or Muhammadan, would be followed, was adhered to throughout, and in fact is the rule even to-day.

Personal law in cases of inheritance, succession, etc.

When *Munsifs* were invested generally with power to try suits relating to real property, in 1831, the same rules as in Regulations III and IV of 1793, were made applicable with this amplification that when the plaintiff was of a different religious persuasion from the defendant, the decision was to be regulated by the law of the latter. But it was recognised that in special circumstances, deviations were justified on grounds of "justice, equity and good conscience." Such cases were not uncommon even in the earlier days, and many of the modern views owe their origin to the decisions of courts during the Regulation period. For instance, when a Hindu widow was out-casted for any reason, it was not justice, equity or good conscience that she should forfeit her husband's property which had already once vested in her.¹ More complex were cases where the Hindu and Muhammadan laws clashed. When a Muhammadan co-sharer sold his share in a property to a Hindu, under the same rule of "justice, equity and good conscience," the other co-sharer could not exercise a right of pre-emption otherwise permitted under the Muhammadan law.² The rule of defendant's law was modified by Sec. 9 of Regulation VII of 1832,

¹ *Matangini Debya vs. Jaykali Debya*, 5 B.L.R. p. 466.

² *Syama Kumar Rai vs. Jan Mahomed and Farman Khan vs. Bharat Chandra Saha Chaudhuri*, 4, B.L.R. (Full Bench Rulings), p. 134.

the effect of which was that when the parties were of different religions and the application of Muhammadan or Hindu law would operate to deprive a party of property to which but for the operation of such law he would be entitled, the decision was to be governed by the principles of justice, equity and good conscience.¹

63. An early Regulation (Reg. XI of 1793), dealt with the custom of primogeniture which existed in the families of some zemindars and even *talookdars*. This custom, it was observed in this Regulation, was "repugnant both to the Hindu and Muhammadan laws, * * * and consequently subversive of the rights of" the others who were entitled to inherit according to these laws.² The Regulation accordingly laid down that the lands of zemindars, independent *talookdars* and other actual proprietors were to devolve to heirs according to the Muhammadan or Hindu law applicable to the individual. Regulation V of 1799 next laid down that Zilla and City Courts were not to interfere in the course of testamentary or intestate succession, except on regular suits. They might, however, appoint an administrator for the *interim* period, where there was quarrel amongst co-sharers.

64. Another Regulation of 1793 (Reg. XXVI) laid down that the age of 18 years was to be considered as the age of majority for both Hindus and Muhammadans.

65. The rules of limitation for suits were very meagre at first. Regulation II of 1805 dealt with this subject and the allied question of acquisition of right by usucaption and prescription,

¹ Act XXI of 1850 made it clear that loss of caste or renouncing of religion would not affect any right of inheritance. A general rule was laid down later by S. 24 of the Civil Courts Act of 1871 (Act VI).

² Another reason stated in the Regulation was that the proprietor of a large estate was "unable to bestow the attention requisite for bringing into cultivation the extensive tracts of waste land comprised therein."

in some detail (see Synopsis). Generally stated, the period laid down for claims by Government was put at 60 years, and for private claims of right to lands, houses or other permanent immoveable property—12 years. But there was a further provision for private claims that where the person in possession (or the person from whom he might have derived within 12 years) “shall have acquired possession thereof by violence, fraud or by any other unjust, dishonest means whatever”—the period of limitation was to be 60 years.

66. The Regulations did not attempt any law of evidence : and consequently considerable amount of discretion was given to the Appellate Courts to take further evidence or to refer back a case for further evidence. The recitals in many of the Regulations show that irrelevant evidence, documentary and oral, often increased the bulk of the record unnecessarily, and caution had to be given to the Courts. But one thing is certain that the Muhammadan jurisprudence regarding evidence, and regarding importance of “physiognomy” of witnesses and outside information, was discarded from the beginning. The English principles, though not directly applied to the Company’s Courts, were followed in the Supreme Court at Calcutta : and their influence rapidly grew. The doctrines of “direct evidence,” “original documents” and “hearsay is no evidence,” became thus the general rule.

It is interesting to find that the authorities thought it necessary to lay down definite rules that the Judge was not to correspond direct with the parties, or that he was not to be influenced by anything outside the record. The last, was, however, important particularly for trials by the Native Commissioners. A check existed in the provisions for appeals against their decisions, for an appeal lay to the Judge in every case, and the Judge would



naturally base his decision on the evidence as recorded, however informally.

67. Regulation XV of 1793, restricted interest on debts to 12 per cent. per annum, and directed that after 1st January, 1798, the Courts would not decree any interest above this rate. The Regulation also laid down that if the interest on any debt, calculated at the above rate, exceeded the principal, the Courts were not to decree a greater sum for interest than the amount of such principal. Compound interest arising from intermediate adjustment of accounts, was forbidden.

For usufructuary mortgages the Regulation laid down that they were to be considered as "cancelled and redeemed whenever the principal sum with the simple interest upon it (at the above rate for bonds), shall have been realised from the usufruct of the mortgaged property."¹

These rules remained operative practically throughout the Company's period, till replaced by the Usury Act XXVIII of 1855.

68. Under the Parliamentary statutes of 1773, 1781 and 1793, the Supreme Court at Calcutta exercised jurisdiction over all European British subjects; and Regulation III of 1793 accordingly excluded such persons from the jurisdiction of the Zilla and City Civil Courts. The position up to this time was explained thus in the Preamble to Regulation XXVIII of 1793 :—

"British subjects residing in the interior parts of the country for commercial purposes, may recover with facility and at a moderate expense, their claims upon the natives,

¹ Mortgages entered into prior to 28th March, 1780, were however subject to the same rate of interest as originally stipulated.

or other inhabitants of the Company's territories who are declared amenable to the Courts of *Dewany Adalat* in section 7 of Regulation III of 1793, by instituting a suit against them in the Court of Zilla or City in which they reside. But the natives of the country, and all other

persons subject to the jurisdiction of the *Dewany Courts* have no means of obtaining redress against such British subjects, but by suing them in the Supreme Court of Judicature at Calcutta. The manufacturers, therefore, as well as the immediate cultivators of the soil, and the lower orders of the people, with whom such British subjects necessarily have extensive dealings,¹ are in fact precluded from all redress in the event of their being wronged, as it is obviously impracticable for the generality of persons of these descriptions to quit their families and occupations, and perform a journey probably of several hundred miles, to sue for small demands, in a court proceeding and deciding according to laws and in a language with both of which they are equally unacquainted, and at an expense that the opulent only can support."

69. To minimise these inconveniences, this Regulation laid down that British subjects (except the military officers

¹ This indicates, incidentally, the extent to which the ramification of commercial agencies, entrusted with the Company's investments in business, extended into the interior villages. The weavers, of whom there were many families in most villages throughout the Province, the silk-manufacturers in Murshidabad, Maldah and several other districts, the salt-makers along the sea-coast, the poppy-cultivators in Behar, the sugar-manufacturers and the shawl-makers, and the embroidery (*chikan*) workers—were advanced with money by these agents, on agreement of adjustment when the goods were ultimately supplied to them. In the "accounting" which was necessarily involved in this process, the Company's agents had very considerable "hold" upon those workers; and it is interesting to note that while these men, when they were tenants under the zemindar, had certain special privileges exempting them from usual process of distraint by the zemindar, all law processes, civil or criminal, against them had to be served through the commercial agents.



and the civil covenanted servants) “ shall not be permitted to reside at a greater distance from Calcutta than ten miles, unless they enter into a bond rendering themselves amenable to the court of *Dewany Adalat* within the jurisdiction of which they may reside, in all civil suits that may be instituted against them by the natives or other inhabitants ” of the country, “ for any sum of money or thing, the amount or value of which shall not exceed 500 sicca rupees.” Section 6 of the Regulation next gave power to the Zilla and City Judges to require every such person to execute the requisite bond, failing which “ to send him to Calcutta under the charge ” of the Court’s officers.¹ The position thus was that people with claims of Rs. 500 or less could sue European British subjects in the district courts ; but for claims of larger amounts or when the defendant resided within ten miles of Calcutta, the suit would be instituted in the Supreme Court. The obstacle in the way of jurisdiction was sought to be got over by a bond from the individual ; but the authority assumed for sending a person to Calcutta in the custody of an officer of the Court, was not so clear.²

In respect of cases which were brought in the District Court by a European British subject, against a native of the country, there was also difficulty in the enforcement of the Court’s decision, if it was against the plaintiff. To obviate this difficulty another section of the same Regulation provided that in such case the Court was to require the plaintiff in the first instance to execute

Provision of personal bond, subjecting to the jurisdiction of the district courts : 1793.

Bond required also in cases brought by European British subjects to such courts.

¹ Section 9 of Regulation III of 1793 also gave jurisdiction to the Zilla and City Judges over European British subjects, to this extent, i.e., execution of such bond.

² Perhaps such occasions were rare. The process meant practically extradition from the local limits of the Court.

a bond agreeing to submit to the adjudication of the Court and for its processes of execution.

70. Regulation XI of 1797 amended the form of the bond to be executed by European British subjects ; but otherwise there was no change till 1813. In this year statute 53 Geo. III, C. 155 laid down that British subjects residing within the Company's territories were to be subject to all Rules and Regulations in force therein. But it is noteworthy that under the same statute, appeals in such cases lay to the Supreme Court at Calcutta, and not to the *Sadar*

Dewany Adalat.

The Regulations relating to the native judicial agencies of *Munsifs* and *Sadar Ameens*, excluded the European British subjects from their jurisdiction. This prohibition, so far as regards the *Sadar Ameens*,¹ was removed by Regulation IV of 1827 (section 2).

71. As regards the European civil officers of the Company who were not required to execute any bond, the position regarding their liability to personal civil action in the *Dewany Adalat*, does not seem to have been very clear till the Parliamentary statute of 1813, referred to above. From the references made in Regulation VIII of 1806, and the tenor of the language in the Preamble to Regulation II of 1793, it would seem that they were nevertheless, probably by the terms of their appointment, amenable to the jurisdiction of the Zilla and City Courts. This Regulation thus laid down a procedure

Jurisdiction given by 53 Geo. III, C. 155 (1818) :

—but appeal to Supreme Court.

Sadar Ameens given jurisdiction in 1814.

Jurisdiction as regards action against European civil officers.

¹ In the case of Principal *Sadar Ameens*, however, European British subjects, European foreigners or Americans were excluded from their jurisdiction : vide section 18 of Regulation V of 1831.



of preliminary enquiry,¹ with a view, in particular, to determine whether the matter was such as would justify the Government to defend.²

The law since 1813 ceased to have effect from 1st June, 1836, by virtue of Act XI of 1836; and later, the Civil Procedure Code of 1859 (Act VIII of 1859) laid down that no person *whatever* shall by reason of place of birth or by reason of descent be in any civil proceeding whatever exempted from the jurisdiction of *any* of the Civil Courts.

72. European military officers and soldiers were however excluded from the above general rule. Under section 107 of the Statute of 1813, they were also subject to the jurisdiction of the local Civil Courts, but only to the extent of "actions of debt and personal actions not exceeding 400 rupees in value or amount." Section 57 of 4 Geo. IV, C. 81 (1824), repealed this provision to this extent that "actions of debt and all personal action against such officers * * * shall be cognizable before a Court of Requests composed of military Officers,³ and not elsewhere; provided the value in question shall not exceed 400 sicca rupees." The position resulting from this was explained thus in section 3 (3) of Regulation XX of 1825 :—

"Officers and soldiers being European British subjects will still be subject to the jurisdiction of the local Courts of Civil Justice, under the provisions of section 107 of

¹ This procedure extended to cases against Commercial Residents also.

² Incidentally it may be noted that Collectors were forbidden to have monetary relations with zemindars and others: Regulation II of 1793.

³ There was a provision in Regulation XX of 1810, that actions of debt and all personal actions against military officers, soldiers, etc., when the claim did not exceed Rs. 200, were to be tried by a military court and not elsewhere. This was repealed by Regulation XX of 1825 so far as regards "cases of debt and other personal action."

statute 53, Geo. III, C. 155, except in actions of debt and personal actions not exceeding 400 rupees in value or amount."

The Statute of 1813 had also a provision (section 106), that Magistrates of districts might take cognizance of debts not exceeding 50 rupees alleged to be due from British subjects to natives of India, and to pass a summary decision on the same. So far as regards such claims against officers and soldiers, being British subjects, this provision was repealed in 1823 by section 57 of Statute 4, Geo. IV, C. 31.

APPENDIX TO CHAPTER IV

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO ADMINISTRATION OF CIVIL JUSTICE

Lord Cornwallis

Regulation II of 1793—Suits previously cognizable by the *Mal Adalat* or Revenue Courts transferred to the jurisdiction of the Civil Courts.

Regulation III of 1793—*Zilla and City Courts*—established : each with a covenanted servant of the Company as Judge, separate from the Collector : jurisdiction in all kinds of civil causes, except succession to zemindari property : appeals to the Provincial Courts of Appeal.

Succession or right of inheritance to zemindary, *talook* land, house or other real property, to be regulated by the rules of Hindu or Muhammadan law, respect being had to the religion of the claimants: and where no such rule existed, according to justice, equity and good conscience (sections 13 and 21).

Collectors, commercial residents and agents employed in the provision of the Company's investment, Salt Agents, Collectors of Customs,—amenable to these Courts : cases arising from their official acts to be defended by Government : procedure.

Also jurisdiction over all British subjects ; and for this purpose, British subjects (excepting King's officers of the army and the covenanted officers) not to be allowed to reside beyond ten miles from Calcutta, unless they executed a bond (Regulation XXVIII of 1793) binding themselves to be amenable to these Courts.

No Court to receive a suit previously instituted in another Court of competent jurisdiction : nor to entertain suits decided by a former Judge of competent jurisdiction : nor matters of a criminal nature.

Not to correspond with parties in suits.

(Repealed and replaced by Acts VIII of 1859, X of 1861, VIII of 1868 and VI of 1871. Minor changes made by Regulations I of 1806, II of 1805, V of 1833 and Act XXII of 1843.)

Regulation IV of 1793—Zilla and City Courts continued : detailed rules of procedure : summons on defendant " to contain a short account of the nature of the demand and to require the defendant either to accompany the officer who may be deputed to serve the summons, to appear in person before the Court, or to deliver to him good and sufficient security " for appearance on due date either personally or by *Vakeel* (modified by Regulation II of 1806) : Court to require similar security for subsequent appearance, else to be committed to close custody (modified by Regulation II of 1806) : procedure for action against sureties in the security bond.

In suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions, the Muhammadan law with respect to Muhammadans and the

Hindu law with regard to the Hindus, were to be considered as the general rules by which the Judges were to decide.

Defendant's written statement to contain objection, if any, to the suit being appealable or non-appealable : amendment of written statement. (Repealed by Act X of 1861.)

Judgment, decree, execution. (Repealed by Act XVI of 1874.)

Plaintiff to pay costs of detention in custody, whether during the pendency of the case or afterwards. (Modified by Regulation VI of 1830.)

Ex parte orders when defendants cannot be found : dismissal where plaintiff neglects for six months. (Repealed by Act X of 1861.)

Rules regarding service of process. (Repealed by Act X of 1861.) Plaintiff to pay all expenses of processes on the defendant and on the plaintiff's witnesses. (Repealed by Act X of 1861.)

Immediate punishment for contempt of Court. (Repealed by Act X of 1861.)

Other modifying Regulations and Acts are—Regulations X of 1799, XLIX of 1803 and XIII of 1806, and Acts XIV of 1847, XII of 1856, VIII of 1859, XI of 1864, VIII of 1868 and XVI of 1874.

Regulation V of 1793—Provincial Courts of Appeal—each to consist of three Judges (modified by Regulation V of 1814), at the headquarters of the four divisions, *viz.*, at Calcutta, Patna, Murshidabad (Murshidabad abolished by Regulation I of 1806) and Dacca : districts comprising each division specified : jurisdiction excluded from that of the Supreme Court of Judicature at Calcutta.

The districts and cities comprised in each division were :—

Patna Provincial Court—The City of Patna, and the zillas of Behar proper, Shahabad, Sarun, Tirhut and Ramgur.

Dacca Provincial Court—The City of Dacca, and the zillas of Sylhet, Mymensingh, Dacca, Jelalpore, Tipperah and Chittagong.

Moorshedabad Provincial Court—The City of Moorshedabad, Boglepore, Rajshahy, Purneah, Dinajpore, Rungpore, and the districts under the superintendence of the Commissioner of Cooch-Behar which were not included in the independent territories of the Rajah of Cooch-Behar.

Calcutta Provincial Court—The zillas of Nuddeah, Jessore, Burdwan, Midnapore, including the Salt districts to the west of the Hooghly river, the 24-Parganas, and the zilla of Calcutta, consisting of the districts under the Collector of Calcutta which were not included in the jurisdiction of the Supreme Court of Judicature.

Functions—(1) to try cases transmitted to them by the Governor-General in Council or the *Sadar Dewany Adalat* : decrees to be executed by the Zilla & City Courts : (Modified so far as regards execution by Regulation II of 1821.)

(2) might take cognizance of cases triable by the Zilla and City Courts, and transfer such of them as proper for trial by the latter ;

(3) to receive and decide upon petitions regarding cases pending with the Zilla and City Courts : (Repealed by Regulation II of 1798.)

(4) to receive complaints of corruption against the Zilla and City Courts or inferior judicial agencies, and enquire and report to the *Sadar Dewany Adalat* : (Repealed by Regulation X of 1806 and Act XXVI of 1839.)

(5) to receive and hear appeals against all decisions of the Zilla and City Courts (modified by Regulations XIII of 1796 and XII of 1797, and repealed by Regulation II of 1798) ; excepting where the Zilla and City Court's decision was based upon an award of arbitration.

In hearing appeals, the Provincial Courts might refer back to Zilla and City Courts for further evidence, or get further evidence to be recorded by the Registrar, where it appeared to them that the "original suit has not been sufficiently investigated" or "for any other cause that may be deemed reasonable."

In respect of contempt of Court or wilful or corrupt perjury—same procedure as for Zilla and City Courts, *i.e.*, proceed straight to try and punish the offender. (*Note.*—Section 21 of Regulation IV of 1793 for Zilla and City Courts does not include "perjury": this is added for the Provincial Courts.)

Sundry detailed rules regarding service of process, transmission of records, copies, etc.

Special summary power given when a zemindar or other landholder resisted the Court's process; punishment—forfeiture of zemindary or *talook*, etc.: appealable to the *Sadar Dewany Adalat*, but execution to await the order of the Governor-General in Council. Similarly with regard to farmers of land. In case of other persons—such fine as proper in consideration of the circumstances of life: appealable, if fine above Rs. 1,000. (Regulation entirely repealed by Acts VIII of 1859 and X of 1861: minor modifications by Regulations XIX of 1797 and IX of 1831.)

Regulation VI of 1793—Sadar Dewany Adalat—"to consist of the Governor-General and the other members of the Supreme Council." (Repealed by Regulation II of 1801.)

Empowered to receive original suit or complaint and refer to the Zilla and City Court for trial: provided the party satisfied that the plaint was improperly refused by the latter and no relief from the Provincial Court. Similarly might refer such a suit to the Provincial Court for trial.

Similarly empowered to receive petitions respecting appeals refused by the Provincial Courts, or respecting matters that may be “depending” in the Zilla and City Courts. (Repealed by Regulation II of 1798.) Might also try in the first instance any matter when so provided for in a Regulation.

Empowered to receive and hear appeals against the decrees of the Provincial Court where the value exceeded Rs. 1,000; this value in the case of revenue or rent-paying land being taken as equivalent to annual produce of Rs. 1,000, and in the case of *lakheraj* to annual produce of Rs. 100. (Modified by Regulation XIII of 1796 and repealed by Regulation XII of 1797.)

Empowered to receive complaints of corruption against Judges, enquire and report to Governor-General.

Contempt of Court or “wilful or corrupt perjury” to be summarily dealt with straight as in the case of Provincial Courts.

Detailed rules of procedure : notices : execution.

(Besides the above Regulations, other modifying or repealing measures were—Regulation IX of 1831 and Acts IV of 1850, XV of 1853, VIII of 1859, X of 1861, VIII of 1868, and final repeal—Act XXIX of 1871.)

Regulation VII of 1793—Vakeels or Native Pleaders— Previous practice as stated in the Preamble :—“Parties in suits have hitherto the option of pleading their causes in person or appointing such *Vakeels* or agents for that purpose as they thought proper. The generality of these *Vakeels* have been either private servants or dependants of the parties * * * ; or men who followed the business of a *Vakeel* to obtain a livelihood.” The former were “unacquainted with the constitution and forms of the Courts,” and consequently the parties became a prey to the “intrigues of the ministerial officers.” The latter had only a “very slight knowledge of the Muhammadan

or Hindu Law," and still less of "the Regulations passed by the British Government." It was therefore considered "indispensably necessary for enabling the Courts duly to administer and the suitors to obtain justice, that the pleading of causes should be made a distinct profession; and that no persons should be admitted to plead in Court but men of character and education versed in Muhammadan or Hindu law, and in the Regulations," so that they might "urge the best arguments for and against every claim," it being "essential to the due administration of justice, that such arguments should be offered to the Judges."

Sadar Dewany Adalat empowered to appoint qualified persons as Pleaders, by *Sanads*: Pleaders to take oath for "truly and faithfully" executing their duties: Persons to be selected "from amongst the students of the Muhammadan College at Calcutta and the Hindu College at Benares. *Sadar Dewany Adalat* might appoint others if sufficient number of persons so qualified not available. (Repealed by Regulation XXVII of 1874.)

Scales of Pleader's fees:—for retainer, four annas: for the rest, on the value of the case at gradually decreasing percentages from 5 per cent. in cases of Rs. 1,000 and below, down to half per cent. for cases above a lakh. (Repealed by Regulation V of 1798.)

Fees were to be payable after the disposal of the case: amount to be embodied in the decree: Pleaders not to receive any further amount or present from the parties—punishment for infringement being suspension from practice.

For incapacity or misconduct in the conduct of a case, gross profligacy or misbehaviour in private conduct—Pleader liable to dismissal.

Government Pleaders to be appointed for the *Sadar Dewany Adalat*, the Provincial Courts, and the several Zilla and City Courts of Patna, Dacca and Murshidabad:

not to advise or be concerned directly or indirectly on behalf of the opponents of Government : might take up other private cases : same fees as for other Pleaders. (Repealed in part by Regulations VIII of 1797 and wholly by Reg. XXV of 1814.)

Regulation XI of 1793—The Preamble refers to “ a custom, originating in considerations of financial convenience, established in these Provinces under the native administration, according to which some of the most extensive zemindaries are not liable to division. Upon the death of the proprietor * * * (the estate) devolves entirely to the eldest son or next heir of the deceased to the exclusion of all other sons or relations.”

This custom, the Preamble continued, was “ repugnant both to the Hindu and Muhammadan law * * * and consequently subversive of the rights of ” the others who were entitled to inherit according to these laws. Further, the proprietor of a large estate was “ unable to bestow the attention requisite for bringing into cultivation the extensive tracts of waste land comprised therein.”

The Regulation thus laid down that lands of zemindars, independent *talookdars* or other actual proprietors were to devolve to heirs according to the Muhammadan or Hindu law applicable to the individual.

This Regulation did not affect estates already vested in one individual prior to 1st July, 1794 : or to bequests and transfers for which full rights were recognised by Regulation I of 1793. (The Regulation was extended to the Jungle Mahals of Midnapore by Regulation X of 1800 : applies to Scheduled Districts, by Act XV of 1874 : slightly modified by Act XVI of 1874 : otherwise is still in force.)

Regulation XII of 1793—To assist the Judges of the various Courts, qualified Hindus and Muhammadans were to be appointed as *Law Officers* to expound the laws of

their respective persuasion. These included the *Kazis* and *Mufties* for Muhammadans.

(Explained by Regulation XVIII of 1817 : partial repeals by Regulations IX of 1807, XVIII of 1817 and III of 1827 : wholly repealed by Act XI of 1864.)

Regulation XIII of 1793—Zilla and City Courts might transfer suits of value not exceeding Rs. 200, to their Registrars for trial : but the decrees not to be valid till countersigned by the Judge. (Repealed by Regulation VIII of 1794 : and for Benares—Regulation LIV of 1795.)

Sundry rules regarding appointment of ministerial officers. (Repealed as regards the Registrars who were covenanted servants, by Regulations X of 1806 and III of 1827, and Acts XXVI of 1839 and XVII of 1862.)

(Other modifications and repeals by Regulations IV of 1796 and XVIII of 1817 : entirely repealed by Act XXIX of 1871.)

Regulation XIV of 1793—gave powers to the Collector to enforce coercive measures for realisation of arrears of revenue against zemindars, whether by confinement, attachment, sequestration or sale.

Collector liable to action before the *Dewany Adalat* of the zilla, if he confined a proprietor in contravention of the rules in the Regulation, or if he exacted an illegal amount. (Sections 11 and 14 repealed by section 11 of Regulation III of 1794.)

Regulation XV of 1793—Rates of interest on bonds restricted to no more than $12\frac{1}{2}$ per cent. simple : no compound interest on intermediate adjustment allowed : no greater sum for interest allowed than the principal. Same rate for mortgages of land after 1780, whether named as “usufructuary” or “simple.” (See also Regulation XVII of 1806.)

(Repealed by Acts XXVIII of 1855 and VIII of 1868.)

Regulation XVI of 1793—The Preamble refers to the Regulation of 27th June, 1787, which empowered Courts to refer certain suits to the decision of one person as arbitrator without the consent of the parties. “This rule deprived the parties in such suits of the benefit of having their claims tried by the regular tribunals, and was further inexpedient, as it vested in the Judges a discretionary power of committing the administration of law to any persons (with certain exceptions) whom they thought proper.”

This Regulation laid down that the Courts might refer suits for money or personal property up to a value of Rs. 200 for the decision of one arbitrator, provided the parties gave their consent, and not otherwise. The award of an arbitrator when so appointed was to be made part of the decree to be passed by the Court, and be binding upon the parties.

There might be two or more arbitrators, and provision was made for an umpire in case of equal division.

An award by arbitrator or arbitrators could not be set aside except on the ground of “gross corruption or partiality.”

(Portion as related to *Vakeels* not being employed as arbitrators was repealed by Regulation XXVII of 1814 : as regards the rest, repealed by Act X of 1861.)

Where both parties were servants of the *Nazim* or his relations, the Court was to hear the case itself, or refer it to the *Nazim* if neither party objected. (Repealed by Act XXVII of 1854.)

Regulation XVII of 1793—This Regulation gave power to the zemindars, *talookdars* and their farmers, under-farmers, etc., to distrain the crops, etc., of tenants for arrears of rent, without notice to the *Dewany Adalat* : but gave jurisdiction to the *Dewany Adalat* in certain respects, viz. :—

(1) To punish (on complaint) the distrainer for act in contravention of the rules in the Regulation ;

(2) to apportion the sale proceeds where the crops, etc., distrained gave a higher value than the arrears ;

(3) to receive security from the tenant and order withdrawal of distraint : (Repealed by Regulation XXXV of 1796.)

(4) to punish tenants resisting distraint made in accordance with the rules in the Regulation ;

(5) to punish *Kazis* conniving at unfair appraisement ; and

(6) generally to receive and try suits instituted to control a distraint.

(Provisions relating to distraint modified by Regulation VII of 1799 : the rules relating to the *Dewany Adalat's* functions were repealed by Act X of 1859.)

Regulation XXIII of 1793—regarding forms of records : periodical reports and returns.

(Repealed partially by Regulations V of 1798 and VII of 1829 : and entirely by Act XII of 1871.)

Regulation XIX of 1793—re-enacted with modification the rules of 1st December, 1790, for the resumption and assessment of invalid non-*Badshahi lakheraj*. The power of resumption and determining the amount of assessment was reserved with the revenue authorities, subject to the following powers of the *Dewany Adalat* :—

(1) to receive references on behalf of Government for adjudication as to whether the *lakheraj* was invalid ;

(2) to receive and try suits by any individual disputing the propriety of the resumption on the ground that the *lakheraj* was valid or on the ground that the revenue from it was not payable to Government but to the plaintiff as zemindar. Questions of doubt as to the authenticity or authority of the grant relied upon, to be referred to the Governor-General in Council ;

(3) to try questions relating to the proprietary right in the land ;

(4) to try suits instituted by the Collectors for the recovery of the public dues from the lands of over 100 bighas resumed and assessed under the Regulation. No limitation of time for such suits.

(Repealed for certain districts by Regulation V of 1813, other districts by Regulations XI of 1817, XXIII of 1817, and entirely by Regulation II of 1819.)

Regulation XX of 1793—empowered the Judges of the Zilla and City Courts, the Provincial Courts and the *Sadar Dewany Adalat* to propose Regulations.

(Repealed by Act XXIX of 1871.)

Regulation XXVI of 1793—laid down the age of 18 years as the term of minority of Muhammadan and Hindu proprietors of land paying revenue to Government.

(Repealed by Act XXIX of 1871.)

Regulation XXVIII of 1793—laid down that Europeans, not British subjects, and residing out of the limits of Calcutta, were amenable to the Courts of the *Dewany Adalat* in the same manner as natives of the country.

European British subjects prohibited to reside beyond ten miles of Calcutta unless they executed a bond that they were amenable to the *Dewany Adalats*.

(Repealed by Act VIII of 1868.)

Regulation XXIX of 1793—relating to Salt. The *Dewany Adalat* empowered to “convict” contractors and others for using compulsion or infringing the obligations under the Regulations.

Salt Agents and other European and native officers declared liable to be sued in the *Dewany Adalat* for infringing the Regulation.

Decrees and processes against Salt-manufacturers or servants of the Agents to be transmitted to the Agents.

(Repealed by Regulations XX of 1817 and X of 1819.)

Regulation XXXI of 1793—*Dewany Adalat* to impose damages if proprietors or other landholders, or raiyats,

hindered the commercial residents or their officers from access to weavers in order to treat with them about the Company's business.

(Repealed by Regulation IX of 1829.)

Regulation XXXII of 1793—Claims of damages by raiyats against opium contractors or their agents, cognizable by the *Dewany Adalat*.

(Repealed by Act XIII of 1857.)

Regulation XXXVII of 1793—Similar jurisdiction of the *Dewany Adalat* in *Badshahi Lakheraj* disputes, as in the case of *Non-Badshahi* (Regulation XIX of 1793).

Regulation XXXVIII of 1793—re-enacting with some modification the rules of 27th June, 1787, prohibiting covenanted civil servants employed in the administration of justice (also revenue) from lending money to zemindars and other landholders ; or for purchasing, taking mortgage or lease of land without the sanction of the Governor-General in Council.

(Last provision repealed by Act VIII of 1868.)

Regulation XL of 1793—relating to Native Commissioners.

“ There being but one established tribunal in each zilla for the trial of causes, the parties in the most trivial suits, wherever they may reside, are often obliged to repair in person to the place at which the Court is held, and to attend until the suit is decided.” Greater hardship to witnesses.

Commissions to be given to selected Muhammadans and Hindus in the cities of Patna, Dacca and Murshidabad, and in the several zillas, to try and determine such suits for sums of money or personal property, not exceeding in amount or value Rs. 50, as the Judge might refer to them. The *Kazi* of each of the above three districts to be *ex-officio* Commissioner : others to be appointed by the *Sadar Dewany Adalat* on nomination by the Judge.

In the zillas, selection to be made from amongst zemindars and other landholders, and their managers, *tehsildars*, etc., also creditable merchants, traders, etc., of acknowledged character. The *Kazi* of Calcutta to be also a Commissioner in the 24-Parganas.

The Commissioners of the three cities were to act either as referees (*ameens*) or arbitrators (*salishan*): and only in such cases within the above money-limits and character as might be referred to them.

So also for the Commissioners in the zillas: but selected zemindars or landholders or their managers might be empowered as *Munsifs*—in which capacity they might “receive, try and determine of their own authority, without any order from the *Adalat* or application thereto,” suits against under-renters and raiyats or cultivators in their estates. (Partially repealed by Regulation XLIX of 1803.)

Commissioners, whether acting as referees, or arbitrators or as *Munsifs*, not to enforce their decisions, but submit the same to the Judge for execution, when necessary.

All decisions of Native Commissioners, in any of the three capacities, appealable to the Zilla or City Court: “not to be set aside for want of form or irregularity in their proceedings, but on merits only.” In case of decision by them as arbitrators, “not to be set aside or altered by the Court, but for corruption or partiality.”

Sundry rules of procedure: reports and returns. (Repealed by Regulation VII of 1829).

Commissioners punishable by the *Dewany Adalat* for corruption or oppressive or unwarranted acts.

(The whole Regulation was repealed and replaced by Regulation XXIII of 1814.)

Regulation XLIV of 1793—In the event of the whole or a portion of an estate being sold for arrears of revenue all engagements of the zemindar with *talookdars*, and all

leases to under-farmers and *pattas* to raiyats, to stand cancelled from the day of sale.

(Modified by section 9 of Regulation I of 1801 and by Regulation V of 1812, and repealed by Acts X and XI of 1859.)

Regulation XLV of 1793—Civil Courts to intimate to the Board of Revenue sales of estates in execution of their decrees. (Repealed by Act IV of 1846.)

Regulation XLVI of 1793—Rules regarding permission to sue as paupers : imprisonment in case claim frivolous or vexatious.

(Modified by Regulation III of 1802 and repealed by Regulation XXVIII of 1814.)

Regulation XLVII of 1793—*Provincial Courts*—two Judges necessary to hold a Court of Appeal : in case of difference of opinion, the senior Judge to have the casting vote.

(Repealed by Act VIII of 1868.)

Regulation XLIX of 1793—*Dewany Adalat* to have jurisdiction in case of disputes about possession or boundary of land.

(Repealed by Act IV of 1840.)

Sir John Shore

Regulation I of 1794—Judge of the *Dewany Adalat* to try offences against the *Abkari* Regulations.

(Repealed by Regulation X of 1813.)

Regulation V of 1794—referred to the practice prior to 1st May 1793, under the Regulation, dated 6th April, 1781, according to which decisions of the mufassil *Dewany Adalat* of cases of values less than Rs. 1,000 were final : and to section 12 of Regulation V of 1793, by which all decisions, irrespective of their values, were declared as liable to appeal to the Provincial Court. This Regulation

regularised the appeals of those cases decided prior to 1793 which had been admitted by the Provincial Courts, though the values were less than Rs. 1,000. Court's jurisdiction to admit further appeals in such cases, restricted.

(Repealed by Act VIII of 1868.)

Regulation VIII of 1794—Judges of the Zilla and City Courts “empowered and directed” to refer to their Registrars for trial, cases of real or personal property of value not exceeding Rs. 200 : but might retain with them such of these cases as they thought proper.

(Repealed by Regulation XLIX of 1803).

Registrar's decision final for values below Rs. 25 (repealed by Regulation XLI of 1803). Cases of value above Rs. 25, appealable to the Provincial Council.

(Repealed by Regulation XXXVI of 1795).

Zilla and City Courts empowered to refer suits of rent and revenue accounts to Collectors for report (this implied partial revival of *Mal Adalat*).

(The whole Regulation repealed by Act VIII of 1868 : other intermediate repeals by Regulation V of 1831.)

Regulation XV of 1795—referred to the practice in the Province of Benares by which parties used to settle their disputes through their own arbitrators. The Regulation laid down that the Zilla or City Court was not to take cognizance of complaints of undue exaction of revenue or breach of agreement of *pattas* or resumption of *Krishnarpan* or similar lands, but desire the party to apply to the Raja. (In case of no relief by the Raja, Collector to settle in consultation with the Raja ; else the Governor-General in Council. *Vide* article 3 of the agreement with Raja Mahipnarain, dated 27th October, 1794.)

(Modified by Reg. VII of 1828, and partly repealed by Reg. XXVII of 1814 and Acts VIII of 1859 and X of 1861.)

Regulation XXXV of 1795—permitted a special

procedure of rent suits, where the arrear was above Rs. 500, to the *Dewany Adalat*, after service of a demand on the tenant : Judge to put the tenant in prison unless arrear paid forthwith on appearance (before trial), or personal security.

(Modified by Regulations VII of 1799 and V of 1812 and repealed by Act X of 1859.)

Regulation XXXVI of 1795—Appeals from the decisions of Registrars to lie to the Judge of the Zilla or City Court (and not to the Provincial Court of Appeal as in Regulation VIII of 1794).

Decision of the Judge on such appeals to be final.

(Modified by Regulation LIV of 1795 and in part by Regulation XLIX of 1803).

Burdwan divided into two districts, *viz.*, the northern division to be denominated the Zilla of Burdwan and the southern—the Zilla of Hooghly, each to have a separate *Dewany Adalat*.

Sarbarakars, or managers of joint undivided estates, appointed under Regulation VIII of 1793, declared eligible for Commissioners under Regulation XL of 1793.

(Repealed by Regulation XXIII of 1814 and Acts X of 1861 and VIII of 1868.)

Regulation XXXVII of 1795—Periodical reports and returns to the *Sadar Dewany Adalat* of subordinate court's work.

(Repealed by Regulation VII of 1829.)

Regulation XXXVIII of 1795—The Preamble recited :—
“ No expense attending the institution of suits in the first instance ; and the ultimate expense being moderate and limited, whatever the length of time the suit may be depending, and no fees whatever being charged on the exhibits and papers filed in the Courts, nor on petitions presented to the Courts * * * ; many groundless and litigious suits and complaints have been instituted

against individuals." The following scales of fees for institution of suits were laid down :—

(1) In suits filed before Native Commissioners vested with the powers of *Munsif*—one anna per rupee. The *Munsifs* were "to appropriate the fees" so received "to their own use, as a compensation for their trouble, and an indemnification of the expense which they may incur in the execution of their office."

(2) In suits filed before the Zilla and City Courts :—up to Rs. 50, one anna per rupee : then to Rs. 200, half anna per rupee : then to Rs. 1,000 to Rs. 50,000, at gradually decreasing proportion of three per cent. of the value to half per cent. : on sums exceeding Rs. 50,000, —quarter per cent.

Detailed rules for calculation of value.

(3) For intermediate petitions, etc., before the Zilla and City Courts :—

For every exhibit (in addition to the plaint), answer, reply and rejoinder—four annas.

On every witness summoned—four annas.

The amounts being double in both cases where the value of the suit was above Rs. 200 : and quadruple when the case was one appealable to the *Sadar Dewany Adalat*.

The fees so paid to be included in the decree under costs.

(4) Same scales as in (1), (2) and (3) in appeals to the Zilla and City Courts or to the Provincial Court of Appeal or to the *Sadar Dewany Adalat*.

(Partially repealed by Regulations XXIII and XXVIII of 1814, and wholly by Act VIII of 1868.)

Fifteen Regulations of 1795 extended, with some modifications, the rules regarding administration of civil justice contained in the Regulations of the previous two years, to the newly acquired Province of Benares. These

Regulations were—VII, VIII, IX, X, XI, XIII, XIV, XVIII, XXIV, XXV, XXIX, XXX, XXXI, XLIX and XL.

Regulation IV of 1796—Duties of Registrars during occasional absence of the Judge. See also Regulation II of 1805.

(Repealed by Acts VIII of 1868 and XXIX of 1871.)

Regulation VIII of 1796—For rent-suits of values above Rs. 500 (Regulation XXXV of 1795) Pleader's fees one-fourth of the rates laid down in Regulation VII of 1793.

(Repealed by Regulation XXVII of 1814.)

Regulation X of 1796—Procedure where the Judges differed as to the meaning and constitution of the Regulation.

(Repealed by Act VIII of 1868.)

Regulation XIII of 1796—Decree of lower court not to be executed till disposal of appeal, provided the party furnished sufficient security : provision of interest at one per cent. per month for the *interim* period.

(Repealed by Act X of 1861.)

Regulation VI of 1797—Revised scales of institution-fees for suits :—

Before Native Commissioners vested with the powers of *Munsifs*—one anna per rupee (as before).

(Repealed by Regulations XLIX of 1803 and XXIII of 1814.)

Before Zilla and City Courts :—

On sums not exceeding Rs. 200—one anna per rupee.

On sums above Rs. 200 to Rs. 1,000—one anna per rupee for Rs. 200 and 4 per cent. on the remainder.

On sums above Rs. 1,000 to Rs. 5,000—on first one thousand as above, and 3 per cent. on the remainder.

Similarly for higher sums, the percentage for the remainder being reduced by graduation to half per cent. when value above Rs. 50,000.

Fees for appeals, same as for institution.

Native Commissioners acting in the capacities of referees or arbitrators, to receive half the amounts of the above fees as “a compensation for their trouble, and in indemnification for the expense which they may incur in the discharge of the duties of the office.”

Fees for exhibits, and witnesses (Regulation XXXVIII of 1795), doubled.

Institution-fees and fees on appeals to be paid in cash. But fees on all pleadings before Court (other than exhibits and witnesses), such as petition, answer, reply and rejoinder, or any supplement to the said pleadings to be paid in stamp, *viz.*, by writing on stamped paper (first introduced) : scales same as in Regulation XXXVIII of 1795. Similarly for copies of papers to be issued by the Court.

(All the above repealed by Regulation I of 1814, after the modifications by Regulations XLIX of 1803 and VII of 1809.)

Regulation VIII of 1797—Prosecutions for recovery of losses sustained by theft and robbery in the Province of Benares, made cognizable by the Courts of civil judicature.

(Repealed by Regulation XXVII of 1814 and Act VIII of 1868.)

Regulation XI of 1797—Amended form of the bond to be executed by European British Subjects agreeing themselves to the jurisdiction of Zilla and City Courts, if they sought relief from such Courts.

(Repealed by Act VIII of 1868.)

Regulation XII of 1797—Money-limit for appeals to the *Sadar Dewany Adalat* raised to Rs. 5,000 : Decisions of Provincial Courts of Appeal for lower values to be final : Petition of appeal to be presented in the first instance to the Provincial Court.

(Modified by Regulation II of 1805 and Act IV of 1850 : repealed by Acts VIII of 1859 and X of 1861.)

Regulation XVI of 1797—embodying the rules of appeal to the Privy Council.

(Repealed by Act VI of 1874.)

Regulation XVIII of 1797—Chittagong, suits for landed property of value up to Rs. 50, might be referred by a Judge to a Native Commissioner to be called “ Commissioner of Land Suits ” : certain rules for guidance.

(Repealed by Regulation XXIII of 1814.)

Regulation XIX of 1797—Translation of papers for the *Sadar Dewany Adalat* : not to be required of Zilla and City Courts unless there was an appeal.

(Repealed by Regulation II of 1801 and Acts VII of 1842 and X of 1861.)

Sir Alured Clarke

Regulation II of 1798—Provision for Review (or direction for Revision) by the *Sadar Dewany Adalat* on grounds of “ new matter or evidence ” or other good or sufficient reason.

(Modified by Regulations III of 1813, XXVI of 1814 : repealed by Acts VIII of 1859, X of 1861 and XI of 1864.)

Regulation III of 1798—Vacations for Courts for Hindu festivals, etc.

(Modified by Regulations II of 1804 and XVII of 1825 : repealed by Acts L of 1860 and XVII of 1862.)

Lord Wellesley

Regulation V of 1798—In case of appeals against decrees relating to land or other real property, the property under decree would be treated as attached pending decision of appeal (where execution stayed), and any private transfer or mortgage during the time would be null and void.

(Repealed by Act X of 1861.)

Institution-fees not to be levied on summary suits for recovering the possession or rent of land under Regulation XLIX of 1793 (and Regulations XIV and XXXV of 1795), such summary suits being only preliminary to regular suits to be instituted later.

(Repealed by Act X of 1861.)

Revised scales of Pleader's fees (in modification of those in Regulation VII of 1793) :—

In all regular suits—for values up to Rs. 1,000, five per cent. : and then in gradually decreasing proportion; for above rupees one lakh,—eight annas per cent.

(Repealed by Regulation XXVII of 1814.)

In rent-suits, and summary suits for possession of land—one-fourth of the above scales.

(Repealed by Regulation XXVII of 1814.)

Same rules as in Regulation VII of 1793, prohibiting Pleaders from realising from the parties any money or present, over and above the prescribed fees,—retained : nor to stipulate for lesser fee.

(Repealed by Regulation XXVII of 1814.)

Regulation V of 1799—Zilla and City Courts not to interfere in the course of testamentary or intestate succession, except on regular suit. Might appoint administrator (*ad interim*) in cases of quarrels amongst co-sharers. The Zilla and City Courts to take charge of intestate property without heirs and report to the Governor-General in Council.

(Amendments—Regulation V of 1827 and Acts XL of 1858, XXVII of 1860 and XXI of 1870.)

Regulation VII of 1799—Summary trials of rent-suits extended to cases below Rs. 500 : power of Judge to cause immediate production and imprisonment of defaulter (before trial) unless arrears paid or surety for the money furnished : similar procedure on report by Collector when case referred to him under section 13 of

Regulation VIII of 1794.

(Explained by Regulation II of 1805 : modified by Regulations IX of 1801, VIII of 1819 and Act VIII of 1835.)

Plaints, exhibits and process, etc., for these summary trials not liable to fees : summary decisions not open to appeal, but there might be separate regular suit.

(Replaced by Act X of 1859 and repealed by Act XVI of 1874).

Regulation IX of 1799—Procedure in cases of resistance of processes of the Civil Courts.

(Repealed by Act XXIX of 1871.)

Regulation I of 1800—The Judge of the Zilla and City Courts to appoint, on reference by the Collector, a suitable guardian as manager for proprietors of estate, who were under age, lunatics or idiots, when not subject to the Court of Wards, and report to the *Sadar Dewany Adalat*.

(Repealed by Act XL of 1858.)

Regulation III of 1800—Judge of the Zilla or City Court might transfer appeals from the decision of Native Commissioners of value not exceeding Rs. 25 to the Registrar for disposal : Registrar's decision final.

(Repealed by Regulation XLIX of 1803.)

Regulation VII of 1800—Documents not to be admitted in evidence unless on stamped paper when stamped paper required by Regulation VI of 1797 : omission or deficit liable to penalty of five times : and in cases of fraud ten times.

(Repealed by Regulation XII of 1812.)

Regulation II of 1801—Reform in the constitution of the *Sadar Dewany Adalat* : Governor-General not to be in it nor the Commander-in-Chief : to consist of three Judges, the Chief Judge being one of the members of the Governor-General's Council (other than above), the other two being selected by the Governor-General in Council from amongst the covenanted civil servants of the

Company, not being members of the Supreme Council (repealed by Regulation X of 1805.) The money-limit for appeal was retained (as in Regulations XII of 1797 and V of 1798), but the *Sadar Dewany Adalat* was empowered to consider cases in which the lower appellate Court might have refused to admit an appeal.

(Repealed by Regulation XXVI of 1814.)

Regulation III of 1801—referred to abuses arising from the provisions in Regulation IV of 1793 (section 14), according to which it was open to a party to charge a witness (speaking adversely) of perjury, requiring the Court to put the witness to custody as an offender, and then for trial before the Court of Circuit on complaint by the party. This Regulation laid down that such case must go through the Magistrate, and no Magistrate should take cognizance unless committed by the Judge.

(Repealed by Act XVII of 1862.)

Regulation III of 1802—referred to Regulations VII of 1793 and VI of 1797, the effect of which was that a plaintiff could not secure a process on the defendant unless he had furnished sufficient security for the costs including fees of the Pleader, to prosecute the plaintiff's case : and to the discretion given to the Judge in this respect by Regulations XLVI of 1793 and VI of 1797, particularly in case of "paupers." This Regulation gave authority to the Judge to fix the extent of the security to be taken also from the defendant so as to secure his appearance during trial : similar powers to Registrars : rules for commitment of litigious pauper suitors or appellants, extended.

(Repealed by Regulations XXVII and XXVIII of 1814 and Act X of 1861.)

Regulation IV of 1802—The Dacca Provincial Court of four Judges, might split up into two such Courts with two Judges in each to hear appeals.

(Repealed by Act VIII of 1868.)

Regulation XLIX of 1803—A number of important changes in the administration and jurisdiction of the judiciary in the districts, was effected by this Regulation:—

(1) To relieve congestion, Assistant Judges were permitted where necessary as a temporary measure, to try such cases as might be referred to them by the Judge.

(Repealed by Regulation XXIV of 1814.)

(2) Registrar's powers extended to Rs. 500 (from previous Rs. 200): but his power to hear appeals from the decision of Native Commissioner taken away, the reason being that "the official conduct of such Commissioner" should be brought before the Judge in all cases: Registrar's decision not to be final, but subject to appeal to the Judge (even for cases below Rs. 25), because such cases "may sometimes involve questions of a general and important nature": but no second appeal when value less than Rs. 100.

(Repealed by Regulation XXIV of 1814.)

(3) Appointment of "Head Native Commissioner" to be denominated *Sadar Ameens*, for trial and decision of cases of value up to Rs. 100 as might be referred to them by the Judge, from amongst "persons of good character and known ability as well as qualified by their education and past employments": to hold Court at the same station as the Zilla Judge: other rules regarding Native Commissioners to apply.

(Repealed by Regulation XXIII of 1814.)

(4) Appointment of Native Commissioners as *Munsifs* not to be restricted to zemindars, landholders and their officers for whom these powers were at first "chiefly intended for assistance * * * * in the recovery of arrears of rent from their tenantry"—this necessity having ceased with the passing of the *Haftam* (Regulation VII of 1799), giving them "more effectual means":

Munsifs to be selected from persons of the same qualification as laid down for Native Commissioners : local jurisdiction of *Munsifs* to correspond to Police jurisdiction (*thanas*), but not within 5 *cose* (10 miles) of the district headquarters : jurisdiction up to Rs. 50 : to hold public *Kutcherries* or Courts at fixed places : might act also as "referees" or "arbitrators" : power to summon witnesses, etc.
(Repealed by Regulation XXIII of 1814.)

(5) Special appeals permitted to Provincial Courts, from all decisions of the Zilla and City Courts, when a regular appeal might not lie, if it appeared that a decision was "erroneous or unjust," or that "from the nature of the cause, as stated in the decree, or otherwise," it was of "sufficient importance to merit further investigation in appeal." Reason stated :—non-appealable cases "may also occasionally involve questions of a general and important nature ; particularly in cases between landholders or farmers of land, and the raiyats, for arrears or exactions of rent, wherein the rights of the landlord and tenant may be in issue."

(Repealed by Regulation XXXIII of 1814.)

(6) Defendants in petty cases instituted before the Native Commissioners in their capacity of *Munsif*, not to be required to furnish security to the process-server or the *Munsif*, unless there was information that the defendant was likely to abscond.

(Repealed by Regulation XXXIII of 1814.)

(Other provisions of details in the Regulation modified and repealed by Regulations XIII of 1810, XXXIV and XXVI of 1814 : and the entire Regulation by Act XVI of 1874.)

The following Regulations of 1803, extended the previous Regulations regarding administration of civil justice, with some modifications, to the newly annexed

territories, *viz.*, the conquered provinces, and the provinces ceded by the Nawab Vizier of Oudh :—

Regulations I (Code), II and III (District *Dewany Adalat*), IV (Provincial Courts), V (*Sadar Dewany Adalat*), X (Pleaders and *Vakeels*), XI (Law Officers), XII (Ministerial Officers), XIII (Reports and Returns), XIV (Paupers), XV (Provincial Court), XVI (Native Commissioners), XVIII (British Subjects), XIX (Covenanted servants lending money), XXI (Arbitrators), XXII (Procedure), XXVIII (Landlords and power of distraint), XXXIV (Rate of interest), and XLIII (Institution-fees and fees of *Munsif*-commissioners, etc.).

Regulation VIII of 1804—transferred the jurisdiction in Allahabad and Goruckpur to the Provincial Court of Appeal at Benares.

(Repealed by Regulation XVII of 1825 and Act VIII of 1868.)

Regulation IX of 1804—altered the denomination of the Provincial Court of Appeal for the division of the ceded Provinces, and laid down some special rules.

(Repealed by Acts XVII of 1862 and X of 1872.)

Regulation I of 1805—Re : Chinsura and Chander-nagore—retained the previous civil courts as established by the French and the Danes, but provided for an appeal to the *Sadar Dewany Adalat* if preferred within 3 months.

(Repealed by Regulation IX of 1809 and Act VIII of 1868.)

Regulation II of 1805—Laid down revised rules of limitation for institution of suits :—

(1) The previous rule (section 14 of Regulation III of 1793, section 8 of Regulation VII of 1795 and section 18 of Regulation II of 1803) laying down generally 12 years for the commencement of civil suits, not to apply to “any suits for the recovery of the public revenue, or for any public right or claim whatever, which may be instituted by or on

behalf of Government.” Sixty years’ period of limitation laid down for such claims, including claims for assessment of land claimed as *lakheraj* ; provided that such cause did not originate within the Provinces of Bengal, Behar and Orissa, before the 12th August, 1765 : within the Province of Benares, before the 1st July, 1775 : or within the Provinces ceded by the Nawab Vizier before the 10th November, 1801 : these periods being the time “ of the Company’s accession to the civil Government of the above Provinces respectively.”

(2) For private claims of right to lands, houses or other permanent immovable property—the previous rule of 12 years, not to apply if the person in possession (or the person from whom he might have derived title within 12 years) “ shall have acquired possession thereof by violence, fraud or by any other unjust, dishonest means whatever,”—period of limitation—60 years.

(3) Mortgage or deposit where “ the occupant of the land or other property may have held possession thereof as mortgagee or depositary only ”—no length of time to bar suit or to give a presumptive right.

(4) Summary suits or processes for rent suits (Regulations VII of 1799, V of 1800 and XXVIII of 1803)—only for the dues for the current year, and not arrears of previous years. Same also for summary process by landholders under those Regulations.

(Extended to C. & C. Provinces by Regulation VIII of 1805, and repealed by Act X of 1859.)

(5) Summary suits for preventing affrays restricted to disputed boundaries, crops, etc.—three months from the date of dispossession.

(Extended to C. & C. Provinces by Regulation VIII of 1805.)

(6) Suits for recovery of fines and penalties under the *Abkari* Regulations, and penal damages—one year.

Sundry rules for calculating period from the date of the decree in cases of appeal, etc. : and for enquiries therefor.

(Modified by Regulation XXVI of 1841.)

The Preamble to this Regulation contained a discourse about the Muhammadan and Hindu laws and practice regarding limitation or acquisition of a right of usucaption and prescription. The Committee of Circuit reporting on 12th August, 1772, remarked that—"by the Muhammadan law, all claims which have been dormant for 12 years, whether for land or money, are invalid; this also is the law of the Hindus, and the legal practice of the country." The Preamble stated that this observation "did not appear to be correct with respect to the Hindu and Muhammadan laws, though it may have been so with regard to the legal practice of the country," and at any rate followed during the previous 30 years. The "declared" ground, the Preamble continued, on which this limitation (12 years) was introduced was "the litigiousness and perseverance of the natives of the country." For claims on the part of Government, the Preamble stated—"the unlimited time heretofore allowed by the laws of England (as by those of the Hindus) has been latterly restricted to a period of sixty years, being the largest period fixed for the judicial cognizance of the claims of individuals in particular cases. This period is recognised by the provisions of the Hindu law in regard to individuals: and is not incompatible with the Muhammadan law." (*Note*: This last observation about Hindu law and Muhammadan law is questionable.)

(The unrepealed portions of the Regulation were repealed by Act VIII of 1868.)

Lord Cornwallis (Second time)

Regulation X of 1805—To effect more complete separation of judicial and executive authority, the Chief Judge

of the *Sadar Dewany Adalat* was not to be a member of the Governor-General's Council, but a selected covenanted civil servant.

The Preamble stated the object as—"ensuring to the people the permanent enjoyment of the inestimable blessing of just laws duly administered, that the separation of the judicial authority from the executive authority in all their respective branches and gradations, should be carried into full and complete execution both in form and practice." Reference was also made to the objection from "the nature of the relations subsisting between the Chief Judge as a member of the Supreme Executive branch of the Government."

(Repealed by Regulation XV of 1807 and Act XVI of 1874.)

Regulation XIV of 1805—extended to Cuttack the Bengal method of civil justice.

(Repealed by Acts XXVIII of 1855 and XII of 1873).

Regulation XV of 1805—provided that the Muhammadan and Hindu Law Officers of the Zilla and City Courts, would, by virtue of their offices, be deemed to be *Sadar Ameens* with jurisdiction to try such cases as might be referred to them by the Judge : to be remunerated with the institution-fees.

Sadar Dewany Adalat permitted to appoint two or more *Sadar Ameens* at district headquarters, when necessary.

(Repealed by Act X of 1861.)

Sir George Barlow

Regulation I of 1806—Zilla Birbhum was made subject to the Provincial Court at Murshidabad, instead of at Calcutta.

(Repealed by Regulations V of 1814, XVII of 1825 and Acts L of 1860, XVII of 1862 and VIII of 1868.)

Regulation II of 1806—The previous rules (Regulations VIII and LV of 1795 and XLIX of 1803) requiring the

defendant on first summons to furnish sufficient security as laid down for appearance during trial, were modified in the following manner :—

(1) The first summons to contain a short statement of demand (not yet a copy of the plaint) with a requisition to attend on a particular day either personally or by *vakeel* : no security at this stage. This summons might be served on any accredited agent of the defendant at the place where the Court was held. In case of weavers and *molungees* (salt-makers), the summons to be served through the commercial residents or agents of the Company.

(2) On appearance, no security or bail to be demanded unless the Judge was “satisfied by sufficient proof that there is reason to believe that the defendant intends to abscond and withdraw himself from the jurisdiction of the Court.”

(3) Failing security when so demanded, the Court to commit the defendant to civil prison : the subsistence cost during detention being awarded to one or the other party as cost according to the final result of the case.

(4) When satisfied that the defendant, pending the trial, might dispose of his property, the Judge might require *malzaminy* and attach the movable and immovable properties of the defendant.

The same Regulation authorised the Courts to grant instalments for satisfaction of decrees in suitable cases : and also provided for treatment of an insolvent debtor when in civil prison. If his statement of property was found on enquiry to be correct and the same was surrendered, he would be released.

(Partially repealed as regards application to cases before Native Commissioners by Regulation XXIII of 1814, and entirely repealed by Act X of 1861.)

Regulation VII of 1806—established an exclusive *Dewany Adalat* of the 24-Parganas to be located in the vicinity of Calcutta : the Judge not being the Magistrate,

(Repealed by Regulation XIV of 1811 : also the entire Regulation by Act XVI of 1874.)

Regulation VIII of 1806—Two difficulties had arisen in the application of the rules in the previous Regulations that Collectors and other European officers (including commercial residents and agents) were amenable to the jurisdiction of the Civil Courts established by the Regulations, for acts done in their official capacity. One difficulty was in determining in what cases Government was to take up defence, particularly when the suit did not purport to be against Government but against the officer ; and the other difficulty was from the jurisdiction given by the Parliamentary Statutes of 1773 and 1793 (13 Geo. III, Cap. 63, section 38, and 33 Geo. III, Cap. 52, section 62) to the Supreme Court, over European British subjects employed by the Company for breach of public trust, or corruption (to be treated as “misdemeanour” in law). This Regulation laid down that the Civil Court on receipt of any complaint or plaint against such a person would, before issuing process, send an English translation to the Governor-General in Council. The Governor-General in Council would then, after making such inquiry as he might judge necessary, through the Board of Revenue or Board of Trade, determine whether the case would be defended by Government : or any relief should be given to the officer or he be left to defend himself. The Governor-General in Council might also direct an enquiry by a Commission in cases of charges of corruption or the like. The proceedings of the Commission were to be controlled by the *Sadar Dewany Adalat*. The Governor-General in Council would, however, pass the final orders on the report of the Commission, as to whether the officer should be prosecuted. If prosecuted the trial was to be by the Supreme Court.

(Extended to European judicial officers by Regulation X of 1806 and repealed by Regulations XVII of 1813, II of 1814 and Acts XXVI of 1839 and XVI of 1874.)

Regulation X of 1806—Extended the general provisions of Regulation VIII of 1806, to European judicial officers.

(Repealed by Acts XXVI of 1839, XI of 1864 and XXIX of 1871.)

Regulation XIV of 1806—incorporating the *Dewany Adalat* of the north division of Shaharanpore with that of the southern division.

(Repealed by Act X of 1874.)

Regulation XVII of 1806—The provisions of Regulation XV of 1793 relating to conditional sales as *Bai-bil-wafa* extended to Benares : rates of interest : redemption of mortgage (Regulation XXXIV of 1803).

(Partially repealed by Act XXVIII of 1855 and extended to the Punjab by Act IV of 1872.)

Regulation I of 1807—provided that when all the Judges of a Provincial Court could not be present, a single Judge might function for office routine, and also examine witnesses previously summoned, the depositions being submitted later to the Judges when sitting jointly : three days in the week fixed for civil cases.

(Repealed by Act X of 1861. See also Regulation XIII of 1810.)

Lord Minto (First)

Regulation XV of 1807—The provision in section 2 of Regulation X of 1805, that the Chief Judge of the *Sadar Dewany* and *Nizamat Adalat* was to be selected from among the civil covenanted servants of the Company “not being members of the Supreme Council,” was rescinded with the simple statement of reason that “it has been deemed desirable.” This Regulation laid down that the Chief

Judge was to be a member of the Supreme Council, but not the Governor-General or the Commander-in-Chief. The other three Judges (the puisne Judges) to be selected from among the Company's covenanted servants.

(Repealed partly by Regulation XII of 1811. Entire Regulation repealed by Act VIII of 1868.)

Regulation II of 1808—"Since the town of Chandernagore has been under the authority of the British Government, the civil laws of France, under which its French inhabitants lived before the war, have been allowed to continue in force": and according to these laws the age of minority was 25 years, "but by the law at present established in France and throughout the French colonies, that period is limited to 21 years." Hence the Regulation laid down that for Europeans, descendants of Europeans and other persons hitherto subject to the civil laws of France at Chandernagore, the age of minority was to be 21 years.

(Repealed finally by Act VIII of 1868.)

Regulation XII of 1808—Serampore—Pending the final settlement of the European War which was then going on, provision was made similar to that for Chinsura and Chandernagore, for appeals to the *Sadar Dewany Adalat* at Calcutta instead of to the Danish Tribunal at Tranquabar.

(Repealed by Regulation III of 1816.)

Regulation XIII of 1808—Under the previous Regulations all causes could be tried by the Zilla and Civil Courts: an appeal lay to the Provincial Court, and where the value exceeded Rs. 5,000 a second appeal to the *Sadar Dewany Adalat*. This Regulation laid down that the causes of value exceeding Rs. 5,000 would be originally tried by the Provincial Court, the appeal to the *Sadar Dewany Adalat* being thus the first appeal, and final except where an appeal lay to the Privy Council.

The Regulation further provided that pending an appeal in a suit regarding landed property, the party left in possession was to furnish security equivalent to one year's assets.

(Repealed by Regulations XXVI of 1814 : and finally by Act X of 1861.)

Regulation IX of 1809—established Native Commissioners at Chinsura for civil causes : appeal to the Commissioner at Chinsura and Superintendent of Chandernagore, in his judicial capacity : second appeal to the *Sadar Dewany Adalat* when value exceeded Rs. 5,000 in case of native inhabitants, and in all suits in case of decision “ in the European Courts of Justice established at Chinsura and Chandernagore ” where value exceeded Rs. 100.

(Repealed by Act VIII of 1868.)

Regulation III of 1810—provided for solemn affirmation instead of oath, for “ paupers.”

(Repealed by Regulation XXVIII of 1814.)

Regulation XIII of 1810—A single Judge of the Provincial Court of Appeal, competent to decide an appeal, except when the original Court's decision is reversed, in which latter case the matter to be submitted to two or more Judges.

Same authority for a single Judge of the *Sadar Dewany Adalat*.

(Modified by Regulations XXV of 1814 and IX of 1831.)

To encourage amicable settlement by the parties, this Regulation provided that the entire amount of institution-fee would be refunded if there was *razeenama* or compromise “ before the pleadings were completed and read ” : applicable to all Courts from the *Sadar Dewany Adalat* to the Native Commissioner. Half the fee so

refunded would be paid to the party or his legal representative : and the other half, in the following manner :—

(1) In cases before the Head Native Commissioner, Native Commissioners acting as Referees or Arbitrators or *Munsifs*, and Registrars—to those officers according to sections 3(5) and 4(7) of Regulation XLIII of 1803 and section 7(3) of Regulation XLIX of 1803.

(2) In cases before the Zilla and City Judges—to Government, according to section 11 of Regulation XLIX of 1803.

(Repealed by Act X of 1861 : certain part by Regulation XXIII of 1814.)

Regulation XII of 1811—provided for augmenting the number of Judges of the *Sadar Dewany Adalat* as might be deemed necessary from time to time.

(Repealed by Act VIII of 1868.)

Regulation IV of 1812—provided that suits by or against native Princes would be represented by a Government official.

(Repealed by Act X of 1861.)

Regulation XVI of 1812—authorised the *Dewany Adalat* of 24-Parganas to execute judgments of the Court of Requests, Calcutta.

(Repealed by Act VIII of 1868.)

Regulation III of 1813—Power of Review extended also to cases in which appeal was allowed.

(Repealed by Regulation XXVI of 1814.)

Lord Hastings

Regulation VI of 1813—provided for reference of suits regarding land to arbitration at the instance of parties.

Cognizance by *Dewany Court* of disputes over forcible dispossession of land, referred to it by the *Faujdari Court*.

(Repealed by Regulations XV of 1824, V of 1827 and Acts IV of 1840 and X of 1861.)

Regulation XVII of 1813—revised the Rules of enquiry by Commission in cases of complaint or charge of corruption, corrupt demand or breach of public trust or other gross misdemeanour against European officers, appearing or alleged before the *Sadar Dewany Adalat*: Governor-General in Council to decide whether the case should go to the Supreme Court of Judicature or otherwise disposed of.

(Repealed by Act XXVI of 1839.)

Regulation I of 1814—Cash payment of fees for institution and appeal, abolished, and stamp duties on plaints substituted. The scales were:—

If not exceeding Rs. 16 in value	..	1 rupee
Between Rs. 16 and Rs. 32	..	2 rupees
„ Rs. 32 and Rs. 64	..	4 „
and so on, as—		

Between Rs. 800 and Rs. 1,000	..	50 rupees
„ Rs. 10,000 and Rs. 15,000	..	350 „
Above Rs. 50,000	..	1,000 „
„ Rs. one lakh	..	2,000 „

Revised scales of stamped paper on application for exhibits: and for miscellaneous petitions.

Valuation of revenue-(or rent-) paying land to be taken at *three times* the annual produce, except in the C. & C. Provinces and Cuttack—where one time. For *lakheraj*—eighteen times the annual produce.

(Repealed partially by Regulations X of 1814, XXVI of 1814, XVI of 1824, and entirely by Regulation X of 1829.)

Regulation II of 1814—In suits against public officer, copy of plaint to be first sent to the Board of Revenue or the Board of Commissioners or the Board of Trade, instead of to the Governor-General in Council direct.

(Modified by Regulation IX of 1829 and repealed by Act X of 1861.)

Regulation XIV of 1814—Two Judges (also two Magistrates) for 24-Parganas (excluding Calcutta), viz., one for the suburbs of Chitpore, Maniktola, Tazeerhat, Nowhazary and Salkea thanas, and another for the rest. (Repealed by Regulation VIII of 1832.)

Regulation XXIII of 1814—reduced into one Regulation, the previous Regulations (with some modifications) regarding *Munsifs* and *Sadar Ameens*.

Commissions to Native Commissioners to act merely as Referees or Arbitrators (*i.e.*, not *Munsifs*) abolished. *Munsifs* only continued.

Munsifs empowered to receive and try and determine all suits for money or personal property, up to value of Rs. 64; but not suits for damages on account of personal injury, nor pauper suits: detailed rules of procedure: prohibited from requiring security from defendant (repealed by Act VI of 1843): authorised to summon witnesses: not to execute their own decrees, except when specially empowered by the Judge: remuneration (including establishment)—the full amount of the institution-fee (repealed by Regulation V of 1831): Judges might employ *Munsif* to investigate local rights and usages.

Certain special rules for the *Munsifs* of Jagunnathpur (Cuttack) and Zilla Chittagong.

Sadar Ameens—The Muhammadan and Hindu Law Officers of the Zilla and City Courts to be deemed *Sadar Ameens* of their respective Zillas or Cities. Other *Sadar Ameens* to be nominated by the Judges and approved by the Provincial Court.

Sadar Ameens to try and determine such cases of real or personal property of value up to Rs. 150 as might be referred to them by the Judge: no jurisdiction where a British European subject or a European foreigner was a party. Questions involving Hindu or Muhammadan law to be generally referred to *Sadar Ameens* who were

Law Officers : Judge might refer appeals from *Munsifs* to *Sadar Ameens* : also matters of account for adjustment : Registrars might exercise similar power for referring to the *Sadar Ameens* as the Judge. Same rules regarding procedure, execution, etc., as for *Munsifs*, applicable : including remuneration with the amounts of the institution-fees (repealed by Regulation XIII of 1824). These fees (in stamp) were to be—up to Rs. 16—stamp Re. 1, from Rs. 16 to 32—stamp Rs. 2, from Rs. 32 to Rs. 64—stamp Rs. 4, from Rs. 64 to Rs. 150—stamp Rs. 8.

A relative, servant or dependant of a party might appear before a *Munsif* or *Sadar Ameen*, instead of a *Vakeel*.

(Repealed in parts by Regulations III of 1817, XIII of 1824, IV of 1827, VII of 1829, V of 1831, VII of 1832 ; and Acts XXIX of 1841, VI of 1843, XVII of 1845, XII of 1847, XXVI of 1852, XIX of 1853 and X of 1861. Finally repealed by Act XVI of 1868.)

Regulation XXIV of 1814—Assistant Judges (Regulation XLIX of 1803) abolished.

Zilla and City Judges—to try cases up to value Rs. 5,000 : to hear appeals from all cases decided by *Munsifs*, *Sadar Ameens* and Registrars.

Cases up to Rs. 500 might be referred to the Registrars : no case in which a European British subject, or a European foreigner or an American was a party—to be referred to the *Sadar Ameens* from and after 1st February, 1815.

Registrars might be specially empowered to try suits for arrears of revenue and the like, summarily.

(Repealed by Regulations II of 1821, IV of 1823, IV of 1827, V of 1831 and Acts XIX of 1853 and X of 1861.)

Regulation XXV of 1814—Provincial Courts :—All original regular suits of value exceeding Rs. 5,000 to be instituted and tried (as heretobefore) in the Provincial

Courts (modified by Regulation XIX of 1817) : but might take over cases of values between Rs. 1,000 and Rs. 5,000 from the Zilla and City Courts, to relieve the latter : power to take and hear appeals defined, as in all cases of decision by the Zilla and City Courts in the first instance ; all cases whether original or appellate decided by the Registrars ; and second appeals in all cases originally decided by the Registrars, *Sadar Ameens* or *Munsifs*.

A Judge of a Provincial Court required to have previously officiated as a Judge or Magistrate of the Zilla or City Court for a period of not less than three years, or previously employed in the Judicial Department or in offices requiring the discharge of judicial functions for not less than six years.

(Repealed by Regulation IV of 1823.)

Sadar Dewany Adalat—might take over suits of values of Rs. 50,000 and over for original trial, from the Provincial Courts, to relieve the latter (modified by Regulation XIX of 1817). Appeals to it in all cases decided by the Provincial Courts in the first instance : also second or special appeals on all appeals decided by the latter from the original decisions of Zilla and City Judges, Assistant Judges or Registrars.

Revised rules regarding trials by a single Judge of the Provincial Court or the *Sadar Dewany Adalat*.

(Repealed by Regulation IX of 1831, Acts II of 1843, X of 1861, VIII of 1868 and XVI of 1874.)

Regulation XXVI of 1814—Revised rules regarding special and summary appeals, review of judgment, execution of decrees, penalties for evading stamp duty and sundry other matters of procedure.

(Repealed in part by Regulations XIX of 1817, IX of 1819, XVI of 1824, VII of 1825, IX of 1831 : and Acts I of 1846, IV and XV of 1850, XVIII of 1852, X of 1861, XI of 1863, V (B.C.) of 1863 and finally by Act XII of 1873.)

Regulation XXVII of 1814—Rules regarding *Vakeels* consolidated : to be nominated by the Zilla and City Judges and approved by the Provincial Courts : preference to be given to candidates educated in any of the Muham-madan or Hindu Colleges established or supported by the Government : to subscribe to agreements as required by the Regulations, *viz.*—not to receive less (?) than the prescribed rates of fee : not to plead in other Courts than to which attached. Security from parties for Pleader's fees abolished : in summary suits—fees to be one-fourth, and four annas for a miscellaneous petition. These rules not to apply to Pleaders appearing in *Munsif's* Courts, for whom Regulation XXIII of 1814 applied.

(Repealed in part by Regulations VIII of 1816, XIX of 1817, VII and XIII of 1829 and IX of 1831, XII of 1833 : and Acts I of 1846, XVIII of 1852, XX of 1853, I of 1846, X of 1861 and XX of 1865 : and finally by Act XVI of 1874.)

Regulation XXVIII of 1814—revised consolidated rules for Pauper suits : plaintiff found to have preferred claims which were unfounded, vexatious or wilfully exaggerated, to be liable to imprisonment up to six months.

(Repealed by Regulations XIII of 1824, II of 1825, and Acts I of 1846 and X of 1861.)

Regulation II of 1815—A Registrar of one district might be deputed for trial of summary suits (Regulation XXIV of 1814) for arrears of revenue or the like, to another.

(Regulation repealed by Act X of 1861.)

Regulation III of 1816—Repealed Regulation XII of 1808 regarding Serampore.

Regulation IV of 1816—Persons in civil jail under Court's orders might represent their grievances of ill-treatment to the Civil Court on unstamped paper.

(Modified by Regulation III of 1826, and repealed by Act VIII of 1868.)

Regulation VIII of 1816—Appointment of Superintendent and Remembrancer of Legal Affairs to advise Government as to the propriety of Government instituting or defending any suit or proceeding in Court : and also aiding in conduct of cases in which Government might be concerned : to furnish opinion on the merits of any case that might be referred.

The Board of Revenue, the Board of Commissioner (in the C. & C. Provinces), the Commissioners in Behar and Benares and the Board of Trade might refer to the Legal Remembrancer for these purposes, in such manner as Governor-General might direct.

Government Pleaders not to be nominated by the Courts, but only the fact of vacancy reported to Government, and the Government would appoint suitable persons by such enquiries as it might think proper.

(Repealed by Regulation XIII of 1829.)

Regulation XV of 1816—Certain facilities given to native military officers in conducting civil suits in which they were concerned : reason :—"local distribution of the regular forces on the military establishment," requiring soldiers "to be stationed at places remote from their homes."

(Declared in force by Act XV of 1845 : repealed by Act X of 1861.)

Regulation III of 1817—To minimise expenses, no stamped paper required for answer, reply or rejoinder in suits of value not exceeding Rs. 64 (*Munsif's Courts*).

Same rate of (court fee) stamp for appeals from the *Sadar Ameen* as in the original suit.

(Repealed by Regulations XIII of 1824, V of 1831 and Act X of 1861.)

Regulation XVIII of 1817—Certain provisions relating to the appointment of Law Officers of the Courts of Justice : (modified by Regulation XI of 1826). Other matters related to ministerial officers.

Regulation XIX of 1817—Plaintiff given the option of filing suits of value between 5,000 to 10,000 in the Zilla and City Court, to be later taken over by the Provincial Court for trial.

The previous restriction (Regulation XXIII of 1814) as to cases which might be entertained by *Munsifs*, viz., that the cause of action must have arisen not beyond one year before filing, was removed, and extended to jurisdiction given for causes of action arising within three years of such date.

(Repealed by Regulation V of 1831.)

The obligation to refer suits for rent (Regulation V of 1812) to Collectors for report, removed, and it made a matter of discretion to the Court. Reason—such reference often caused delay instead of expedition (modified by Regulation XIV of 1824). Petitions for arrest of tenant (Regulation VII of 1799) defaulting rent, to be made to the Judge of the Zilla where the defaulter resided: the Judge, unless sufficient security furnished, to send the defaulter to the Judge of the Zilla where the land was situated.

(Repealed by Act X of 1859.)

(Other repeals partly by Act I of 1846, and wholly by Act X of 1861.)

Regulation XXII of 1817—For, “considerations connected with the recent disturbances in Cuttack,” the Zilla and City Judge empowered to remove and appoint *Munsifs*, *Sadar Ameens* and subordinate staff, without previous sanction of the Provincial Court.

(Repealed by Regulation V of 1818.)

Regulation IV of 1818—re-established *Dewany Adalat* in the northern division of Shaharanpur.

(Repealed by Act XV of 1874.)

Regulation V of 1818—Cuttack—Commissioner vested with special power in civil affairs.

(Repealed by Regulation I of 1829 and Act VIII of 1868.)

Regulation VIII of 1819 (the *Patni* Regulation)—restricted jurisdiction of the Civil Court to this extent that by following the procedure of notices as laid down in it, the zemindar might induce a sale of a *Patni* tenure for arrears of rent, by the Court, without the usual processes of a rent-suit. The Registrar or acting Registrar of the Civil Court, or in his absence, the person in charge of the office of Judge or of Magistrate, was to conduct the sale (repealed by Act XVI of 1874.) The function of conducting sale was transferred to Collectors by Sec. 16, Reg. VII of 1832. This section was repealed by Act X of 1861, and the Collector's power was made clear by Act VIII (B.C.) of 1865.

This Regulation also defined *Patni* tenure, and explained that it was transferable and its holder might also create permanent and transferable subordinate tenures.

Regulation IX of 1819—Rules regarding Special Appeals extended to admission of a second or special appeal generally to cases of "showing ground, from whatever cause, to presume a failure of justice." Concurrence of two Judges necessary.

Also laid down for Calcutta, special rules for security for costs from a defendant who wanted to contest.

(Repealed by Regulations II of 1825, IX of 1831 and Acts XV of 1841 and X of 1861.)

Regulation I of 1820—Same restricted jurisdiction in respect of certain *taluks*, as for *Patni* tenures. (See also Regulation VII of 1832.) The Regulation is in force.

Regulation I of 1821—"Special Commissioners," appointed in the Ceded and Conquered Provinces, to take over from the *Dewany Adalat* the judicial functions relating to "claims to recover possession of land, * * which may have been lost through public sales in liquidation of arrears of revenue, or through private transfers,—such sales and transfers having been effected by the undue influence of a public officer." Section 3(3), however,

included private purchasers, when there was "reasonable ground for believing that the purchase or acquisition was effected by violence, extortion or oppression," apart from any influence of a Government officer.

Muffassil Special Commissioners to consist of one or more members as the Governor-General in Council might determine : and the Sadar Commissioner to consist of two or more such officers. Comprehensive jurisdiction for the Commissioners, including power to revise even when the Court of Judicature might have given a decision : *Dewany Adalat* to stay all proceedings in the pending cases before them, and transfer them to the Commissioners.

Appeal from Muffassil Special Commissioners to the Sadar Special Commissioners. Decision of the Sadar Commissioners final, subject only to the orders of the Governor-General in Council. Or to further appeal to the Privy Council if the value was such that had the case been decided by the *Sadar Dewany Adalat*, such appeal would have lain. Cases of doubt as to jurisdiction to be decided by the *Sadar Dewany Adalat*.

(Muffassil Special Commissioners abolished by Regulation I of 1829 : the restriction of jurisdiction to cases of undue influence by a public officer was repealed by Regulation I of 1823. Other modifications of a minor nature by Regulation XVIII of 1829 and Act III of 1835. Wholly repealed by Act VIII of 1868.)

Regulation II of 1821—Too heavy work on the Zilla and City Courts by the existing Regulations, realised. Hence, this Regulation provided for—

(1) increasing the number of *Munsifs* (modified by Regulation V of 1831) : their jurisdiction extended up to Rs. 150, but not yet for real property (repealed by Regulation V of 1831) : remuneration, including cost of establishment, same as before, viz., the amounts of the institution-fees (repealed by Regulation V of 1831) ;

(2) jurisdiction of *Sadar Ameens* increased to Rs. 500 (repealed by Regulation V of 1831) : remuneration (including establishment) still the same as before up to cases of value of Rs. 150, *viz.*, the full amount of institution-fee : in cases of value above Rs. 150, the remuneration to be half the amount of institution-fee (repealed by Regulation XIII of 1824) : foreigners excluded from jurisdiction (repealed by Regulation IV of 1827) ;

(3) power of execution not yet given to *Munsifs*, but might be exercised by the Registrars or *Sadar Ameens*, to relieve the Zilla and City Judges, in respect of decrees by *Munsifs* ;

(4) extended power of Registrars of Zilla and City Courts to try summary cases (mainly rent-suits) : Registrars might receive direct original complaints of suits and appeals triable by them : also applications for execution of the decrees of *Munsifs* and *Sadar Ameens* : Registrars of Zilla and City Courts to receive a fixed monthly allowance, instead of a portion of the institution-fees ;

(5) Registrars of Provincial Courts abolished ;

(6) Judges to encourage regular suits for rent instead of summary claims under Regulation V of 1812. (repealed by Regulation V of 1831 and Act X of 1859.)

(The whole Regulation was repealed by Act X of 1861.)

John Adam

Regulation I of 1823—Restriction of jurisdiction of Special Commissioners under Regulation I of 1821 (Ceded and Conquered Provinces) to cases of undue influence by a public officer, where the sale was for arrears of revenue, removed ; it being explained that there might be irregularities or illegalities without such undue influence which might need rectification. Also explained that the jurisdiction extended to private purchasers where there was violence, extortion, oppression or fraud.

(Modified by Regulation I of 1829 and Act III of 1835, and repealed by Act VIII of 1868.)

Regulation VI of 1823—provided for a summary proceeding by the Zilla Judge against raiyats who had by registered document contracted to cultivate indigo on receipt of advance, in cases of apprehended failure to comply : also power to Registrar.

(Extended to Orissa, Behar and Benares by Regulation V of 1824 : amended by Regulation V of 1830, and Acts X of 1838, VII of 1870 and Act XVI of 1874.)

Lord Amherst

Regulation III of 1824—Registrar of one district might, when specially empowered, try regular suits of another district ; object—to relieve the Judges of districts when there was congestion.

(Repealed by Act X of 1861.)

Regulation V of 1824—Operation of Regulation VI of 1823 regarding summary trials of breaches of indigo contracts, extended to Orissa, Behar and Benares and the C. & C. Provinces.

(Repealed by Act XV of 1874.)

Regulation XIII of 1824—remunerating *Sadar Ameens* with the amounts of institution-fees, abolished : to be paid henceforth monthly fixed allowances.

To encourage compromises, this Regulation provided for refund to the parties of the institution-fees where there was *razeenamah* (amicable settlement) before the pleadings were completed and read : same for appeals.

Jurisdiction given to *Sadar Ameens* to try pauper suits.

Zilla and City Judges authorised to refer matters of account or adjustment in suits for rent and the like, to *Sadar Ameens*.

(Repealed by Act X of 1861.)

Regulation XIV of 1824—Collectors authorised to try and decide claims for arrears of rent, and not simply to report to the Judge as previously. Reason stated in the Preamble—"to expedite the trial and adjudication of such suits." Any party aggrieved might file regular suit before the Zilla and City Judge.

(Regulation VIII of 1831 gave jurisdiction to Collector to receive suits of such claims, and not mere references from the Judge. Repealed by Act X of 1859.)

Regulation XV of 1824—Jurisdiction to decide by summary process disputes about possession likely to lead to breach of the peace, given to the Magistrate, subject to any regular suit before the Judge. One reason stated being that "in some districts the offices of the Judge and the Magistrate are now held by different persons."

(Repealed by Regulations IV of 1828, II of 1829 and Act IV of 1840.)

Regulation I of 1825—Authority given to European Judges, to personally superintend the execution of their processes.

(Repealed by Acts X of 1861 and XVII of 1862.)

Regulation II of 1825—Petitions for review to be on stamped paper of one rupee, to prevent abuse : sundry detailed rules regarding review.

(Repealed by Act X of 1861.)

Regulation V of 1825—removed doubts about the legality of union of the powers of the Judge and Collector in the same person.

(Repealed by Act VIII of 1868.)

Regulation VII of 1825—Execution—sales of houses, gardens, small portions of *lakheraj* land, might be effected by the Court direct, instead of through the Collector. (Regulations XLV of 1793, XX of 1795 and XXVI of 1803.)

(Repealed by Acts X of 1861, IV of 1846 and XVI of 1874.)

Regulation XII of 1825—Civil Courts authorised to inflict sentence of imprisonment in lieu of fine for contempt of Court : but *Munsifs* and *Sadar Ameens* to report first to the Judge or Registrar, before enforcement.

(Repealed by Act XVII of 1862.)

Regulation XVIII of 1825—With the annexation of Chinsura to the Zilla of Hooghly, following the Treaty with the Netherlands (17th March, 1824), administration of civil justice to be in accordance with the general Regulations of the Province.

Regulation XX of 1825—Officers and soldiers being European British subjects, still to be subject to the jurisdiction of the local civil courts under the provisions of section 107, 53 Geo. III, C. 155, except in actions of debt and personal actions not exceeding Rs. 400 in value or amount. Cases of value Rs. 400 or less, to be cognizable only before a Court of Requests composed of military officers.

(By Act XI of 1836, the statute above ceased to have effect from 1st June, 1836. Act XI was repealed by Act VIII of 1868. In the mean time Act VIII of 1859 laid down that no person *whatever* shall by reason of place of birth or by reason of descent be, in any civil proceeding whatever, excepted from the jurisdiction of *any* of the civil courts.)

The provisions of Regulation XX of 1810, which reserved the trial of civil causes not exceeding Rs. 200 to the Military Court, were modified to the above extent.

(The Mutiny Act, 4 Geo. IV, C. 81, put the limit to Rs. 400 in certain cases, for the Military Court of Requests.)

Regulation I of 1826—Limit of number of Judges *viz.*, 4, for the Provincial Courts of Appeal (sec. 2(2) of Regulation V of 1814) removed : any number as necessary.

(Repealed by Act VIII of 1868.)

Regulation III of 1826—Judges to visit civil prisons.
(Repealed by Act XXVI of 1870.)

Regulation IV of 1826—Special Commissioners (Muffassil and Sadar) under Regulations I of 1821, and I of 1823, might sit singly, for “speedy accomplishment of the objects contemplated.”

(Repealed by Act VIII of 1868.)

Regulation XI of 1826—*Law Officers*—Certificate of qualification after examination by the Committee appointed by the Governor-General in Council, in the prescribed form, required before appointment. A public examination for the purpose every year.

Vakeels—Persons with such certificate might work as *Vakeels*.

(Repealed by Acts V of 1845, I of 1846 and XI of 1864.)

Regulation I of 1827—Bhagalpur Hill Tribes—Special Commissioner (and not ordinary Civil Courts) to try cases.

(Repealed by Act XXIX of 1871.)

Regulation III of 1827—Revised certain rules regarding Law Officers.

(Repealed by Acts XI of 1864 and XVI of 1874.)

This Regulation also laid down that decrees would be automatic without further trial, for claims of money or property which might have been “corruptly taken or extorted” by a person and that person was already found guilty and convicted in a criminal court. Is in force.

Regulation IV of 1827—*Sadar Ameens*—Jurisdiction extended to Rs. 1,000 : also to European British subjects in civil matters (under Regulations XXIII and XXIV of 1814 such suits could not be so transferred by the Zilla or City Judge) : provided also for “additional *Sadar Ameens*.”

(Repealed by Regulation V of 1831 and Act X of 1861.)

Lord William Bentinck

Regulation III of 1828—This Regulation transferred the jurisdiction of the ordinary civil courts in questions about liability or non-liability of any land to assessment of revenue, to a class of semi-judicial officers called “Special Commissioners.” The Preamble referred to Regulation II of 1819 and other subsequent Regulations which gave authority to Revenue Officers employed in resuming invalid *lakheraj*, alluvial lands and large areas of waste and jungle outside the limits of permanently settled estates—to determine such question of liability; and then explained that the intention of these provisions was that “the decision of the Collectors and the Board should be held and considered to be judicial awards, and that the suits preferred (by any individual to contest the awards) to the ordinary Courts, being of the nature of appeals, should be disposed of “as such; but the practice of the Courts in treating the appeals (meaning the suits so instituted) made to them, as original suits,” and “other causes” had resulted in the accumulation of heavy arrears in these Courts. This Regulation, therefore, made it clear in the first place (section 4) that the decision of the Collectors on the question of liability to assessment would be considered as a “decree”; and that if any individual felt aggrieved he might appeal against it to the newly created officers called “Special Commissioners,” and not to the ordinary Civil Court. The Regulation next empowered the Governor-General in Council to appoint one or more such Special Commissioners for such districts as he might consider necessary. Other Commissioners (*vide* Regulation I of 1821) might also be vested with the powers of such Special Commissioners. The decision of the Special Commissioner or such other Commissioner was to be “final,” except in cases in which if they were

decided by the *Sadar Dewany Adalat* (i.e., cases of value above Rs. 50,000) an appeal would have lain to the Privy Council, in which cases an appeal would lie direct to His Majesty the King in Council, from the decision of the Special Commissioner.

The Regulation also laid down that all such cases then pending in the several Civil Courts, should forthwith be transferred to the Special Commissioners: See also Regulations IV and XVIII of 1829.

The sections relating to Special Commissioners were formally repealed by the Amending Act I of 1903.

Regulation V of 1828—Zilla and City Courts to execute the awards of Military Courts under Regulation XX of 1810.

(Repealed by Act XI of 1841, which also repealed all Regulations concerning Military Courts of Requests).

Regulation VII of 1828—Certain restrictions to the jurisdiction of Civil Courts in the territory of the Raja of Benares, when matters related to revenue, sales for arrears, etc.

Regulation IX of 1828—provided for revival of second or special appeals instituted in *forma pauperis*, but rejected between 1814 (Reg. XXVIII) and 1825 (Reg. II).

(Repealed by Act XXIX of 1871.)

Regulation III of 1829—Official designation of Judges changed: where two judges of a Provincial Court differed, reference to be to such public officer as the Governor-General in Council might direct.

(Repealed by Act VIII of 1868.)

Law Officers—The offices of Hindu and Muhammadan Law Officers in the Provincial Courts, abolished: but references on any question of Hindu or Muhammadan law might be made to the Law Officer of the nearest Zilla or City Court or of the *Sadar Dewany Adalat* (repealed by Act XI of 1864.)

(Regulation finally repealed by Act XXIX of 1871.)

Regulation IV of 1829—The provision of transferring pending cases to the Muffassil Special Commissioners in Regulation I of 1829, not to apply to the cases pending in the *Sadar Dewany Adalat*.

(Repealed by Act XXIX of 1871.)

Regulation VII of 1829—relating to forms and periodical reports for civil courts.

(Repealed by Act XVII of 1862.)

Regulation XIII of 1829—abolished the office of Superintendent and Remembrancer of Legal Affairs.

(Repealed by Acts X of 1861 and VIII of 1868.)

Regulation XIV of 1829—extended the rules in Regulation IX of 1819 (section 7) to cases of persons resident within a foreign territory.

(Repealed by Act X of 1861.)

Regulation XVIII of 1829—The rules in Regulations I and IV of 1829, for transfer of certain pending cases to Revenue Commissioners, modified to this extent that if neither party desired the transfer, the Civil Court might proceed with trial, subject to appeal to the *Sadar Dewany Adalat*.

(Repealed by Act VIII of 1868.)

Regulation I of 1830—Appeals in Midnapore previously heard by the Commissioner (Regulation I of 1829) would be heard by the Provincial Court of Appeal of the Calcutta Division.

(Repealed by Act VIII of 1868.)

Regulation VI of 1830—Rules regarding subsistence allowance of civil prisoners (Regulations IV of 1793 : VIII of 1795 and III of 1803).

(Repealed by Act X of 1861.)

Regulation V of 1831—Munsifs—empowered to receive complaints for trial : jurisdiction extended to Rs. 300 both real and personal property, excepting pauper cases, unless referred to by the Judge : authorised to consult Law

Officers of the Zilla Court in cases of doubt regarding succession to landed property : execution applications, however, to be transmitted to Zilla Judge : section 3(3) of Regulation XXIII of 1821, providing for the remuneration of *Munsifs* with the amounts of institution-fee, rescinded.

Principal Sadar Ameens—might receive and try suits up to Rs. 5,000 referred to them by the Zilla or City Judge, excepting cases in which a European British subject or European foreigner or an American was a party (modified by Act XXV of 1837 and repealed by Act XXVII of 1838) : power to execute their own decrees, subject to appeal to the Zilla or City Judge.

Appeals from decisions of *Munsifs* or *Sadar Ameens* to the Zilla or City Judge, to be final.

Registrars—Reference of cases to Registrars for trial abolished : such cases to be transferred to the *Sadar Ameens*.

Vakeels—need not be Hindu or Muhammadan, but might be a person of any religion.

(Repealed in part by Regulations VII of 1832, II and XII of 1833, and Acts XXV of 1837, XXVII of 1838, VI of 1843, I of 1846, XXVI of 1852 and Act X of 1861, and finally by Act XVI of 1868.)

Regulation VI of 1831—A separate Court of *Sadar Dewany Adalat* constituted for the Western Provinces comprising the Provinces of Benares, the Ceded and Conquered Provinces, including the districts of Meerut, Shaharanpur, Mujaffar-nagar and Bulindshahar.

(Repealed in part by Regulations VI of 1832, and Acts XVII of 1862, VIII of 1868 and XVI of 1874.)

Regulation VIII of 1831—Revised rules regarding rent-suits.

Civil Court's jurisdiction restricted only to regular suits, either to contest the Collector's award, or otherwise.

Summary proceedings by Collectors restricted to " enforcing payments of the rents paid in the past years

to the entire exclusion of all claims to increase, except on proof of *bona fide* written engagements to increase."

Suit in Civil Court to lie against Collector's award when preferred "within one year from the date of delivery or of the tender of the party against whom the award is made, of the Collector's decision," although Collector given power to execute his award.

(Modified by Regulation VII of 1832: repealed by Act X of 1859.)

Regulation IX of 1831—A Judge of the *Sadar Dewany Adalat*, sitting singly, authorised—

(1) to hear a petition of appeal, and reject without calling the other party, in case he was of opinion that no sufficient ground had been made out to impugn the correctness or justness of the decision of the Lower Court;

(2) to issue an injunction on the Lower Court to revise its decision, in case he was of opinion that the decision was manifestly unjust or at variance with some Regulation in force or in opposition to the Hindu or Muhammadan law or other law applicable to the case;

(3) to call for the records of the Proceedings of the Lower Court with English translation.

A single Judge not competent where the decree or order appealed against was passed in a regular suit or appeal after full investigation of the merits, and the difference of opinion was only as to the facts or evidence or on a disputed or doubtful point of law or construction of any Regulation; and in such case the single Judge could not reverse the Lower Court's decision, but the case was to be placed before two or more Judges.

(Repealed by Acts I of 1846 and VIII of 1868.)

Regulation VI of 1832—European Judges enabled to avail themselves of the assistance of natives in the administration of civil (also criminal) justice.

(Repealed by Act VIII of 1868.)

Regulation VII of 1832—Time for appeals :—

From the Zilla or City Court to the <i>Sadar Dewany Adalat</i> or to the Provincial Court of Appeal	3 months.
From the Principal <i>Sadar Ameen</i> to the Zilla or City Judge	3 ..
From <i>Sadar Ameen</i> or <i>Munsif</i> to the Zilla or City Judge	1 month.

Execution—*Sadar Ameens* and *Munsifs* competent to execute their decrees, except confinement of a defendant, in which cases direction to be taken from the Zilla or City Judge.

Special appeals—from Zilla or City Judges to be to the *Sadar Dewany Adalat*. [Sections 26(12) and 30 of Regulation II of 1819, and Regulation V of 1831.]

Appeals from Registrars—to lie to the Zilla or City Judge. Duties performed by Registrars and Judges under Regulations VIII of 1819 (*Patni Regulation*) and I of 1820, transferred to Revenue officers.

Sadar Ameens—authorised to receive in the first instance any original suits or appeals which might be eventually referable to them under the Regulations.

Explained Regulation IX of 1831 that a single Judge of the *Sadar Dewany Adalat* was competent to dispose of all cases, regular as well as miscellaneous, with the exceptions as to doubtful opinion on facts or law mentioned therein.

(Repealed gradually by Acts XXV of 1837, XIV of 1845, I of 1846, X of 1861, XI of 1863, XVI of 1864, XVI of 1868 and VI of 1871.)

Regulation VIII of 1832—rescinded Regulation XIV of 1814, which formed the 24-Parganas (outside Calcutta) into two civil jurisdictions.

(Repealed by Acts VIII of 1868 and XV of 1874.)

Regulation II of 1833—Governor-General in Council took power to abolish the Provincial Courts of Appeal. (Repealed by Act VIII of 1868.)

Regulation V of 1833—Jurisdictions of the City of Dacca and Zilla of Dacca Jalalpore, combined into one district called Dacca.

(Repealed by Acts VI of 1863 and XVI of 1874.)

Regulation VIII of 1833—provided for additional Judges of Zilla and City Courts.

(Repealed by Act VI of 1871.)

Regulation XII of 1833—laid down how pleaders' fees were to be fixed for calculation of costs : gave pleaders liberty to settle the remuneration with the parties, but the amounts to be stated in the *Vakalatnama*, and no larger amount could be charged as costs.

Private arrangements between the parties and their pleaders to be enforced by regular suit, if not amicably paid or settled.

(Amended by Act XIII of 1838 and repealed by Act I of 1846.)

Regulation XIII of 1833—abolished the Courts of *Dewany Adalat* of the Zillas of Ramgarh and Jungle Mahals : and special rules for the superintendence of these tracts by an " Agent of the Governor-General, owing to constant disturbances."

(Amended by Act XX of 1874.)

CHAPTER V

LAND REVENUE

In Bengal, as in the greater part of the rest of India, land had been from the earliest known history, the main source of revenue to the King and the State. So it was at the time when the Company acquired the Dewany in 1765.¹ But the outstanding feature of the administration of this branch of revenue during the Regulation period was the Permanent Settlement of 1793. Perhaps no other measure has been subjected to so much criticism in later years, as this arrangement of Lord Cornwallis by which the assessment on the zemindars was fixed in perpetuity. A historical account of the zemindary system of land-tenure in Bengal, together with the reasons which led to the Permanent Settlement and the effects of that settlement upon the social, economic and cultural developments of the country, has been given in the other book—"Land System of Bengal."² We will deal here mainly with the Regulations which were passed from time to time to implement this Settlement. These Regulations, it may be said at the outset, were an effort to reconcile two opposite purposes, *viz.*, punctual realisation of the revenue assessed and protection of the tenantry against exaction or

Outstanding feature—the Permanent Settlement of 1793—dealt with in a separate book.

Jarring notes in the Regulations—attempting to reconcile opposite purposes.

¹ The land-revenue, at any rate on paper, in 1765-66, amounted to Rs. 209 lakhs, and the other revenues not more than 20 lakhs. Actual collection, however, was only Rs. 1,68,10,000.

² Calcutta University publication, 1940. A chronological Synopsis of the Regulations relating to land revenue and land tenures is also given in the Appendix to that book.

oppression. In the conditions of the time, and for about 30 years thereafter, the two purposes were irreconcilable, and we find thus many inconsistent provisions in several Regulations which are difficult to explain, except by assuming that considerations of revenue were treated as paramount.

2. When the English came, the country was divided into a number of *mahals* or estates, each held by a zemindar¹ who was responsible to pay into the public treasury, the revenue assessed on his estate. During Akbar's time, the revenue for the territories which then comprised *Subah* Bengal, amounted to Rs. 106.93 lakhs.² The next revision was by Sultan Shuja in 1758, *i.e.*, 76 years later. The revised revenue then, including an addition of Rs. 14.36 lakhs for new territory annexed to the *Subah*, was Rs. 131.16 lakhs. The third settlement was by Murshed Kuli Khan, 64 years afterwards, when the assessment was raised to Rs. 142.68 lakhs. Thenceforward enhancements were obtained by irregular imposts of what were called *Subahdary Abwabs*. With these additions of *abwabs*, the revenue assessed on the zemindars, stood at Rs. 153.6 lakhs in 1756.

3. The Battle of Plassey took place in the following year; and shortly after, the English Company secured the assignments of the revenue of the districts of 24-Parganas, Burdwan, Midnapur and Chittagong, with liberty to make assessments in their own way. The revenue-demands from these districts (called then "ceded lands"), were considerably enhanced, and in 1765, they

¹ For an account of the origin of the landlord-system (*raja*,—or *zemindary*) in Bengal—from its earlier political conditions and peculiar process of reclamation, and then its development under the Muhammadan government, see Chapters II to VI of "Land System of Bengal," *ibid.*

² Including 43.49 lakhs assigned as *Jagirs* for civil and military administration.

amounted to Rs. 57.5 lakhs. Adding the land-revenue of the remaining districts (called "Dewany lands"), the total at the time the Dewany of the entire *Subah* was obtained, amounted to Rs. 209 lakhs.¹ The actual collection in 1765-66, including about 9 lakhs from other sources, was however only Rs. 168 lakhs.²

4. The Company sought to increase this revenue further, and a device of settling the estates with the highest bidders at auction, was adopted in 1769. This resulted in the dispossession of many zemindars who had been holding their estates for generations ; and adventurers seeking the best by exaction from the tenantry during their short term, took their place. Other zemindars made impossible bids which they were unable to pay afterwards. But the worst happened when the severe famine in 1770, followed by a terrible pestilence, swept away over one-third of the population and reduced an equal proportion of cultivable land into waste and jungle. We do not know what was done for the relief of distress, but the Directors insisted on the realisation of the revenue as assessed by the auction method, and the situation which developed was rightly called the "scandals of the famine of 1770," and forms perhaps the darkest chapter in the Company's administration. The assessment of land-revenue by the auction method amounted to about Rs. 228.36 lakhs for *Subah* Bengal, but, inspite of the most stringent measures,

Company's attempts to further increase : the auction settlement of 1769 : its evil effects.

The famine of 1770.

¹ We pass over the paper-assessment of Cossim Ali who was made Nawab by Clive in 1760. It represented the rentals derived from the raiyats, ignoring the zemindars, *talookdars* and other intermediate landholders, and was never realised, as it could not possibly be, from the zemindars : see Land System of Bengal, *ibid.*, p. 81.

² Appendix to Dr. P. N. Banerjee's "Indian Finance in the Days of the Company," 1928.

it was impossible to realise this amount, and heavy arrears accumulated every year.¹ The term of

Vain efforts to continue the high assessment.

the auction settlement expired in 1774, but the same amounts were persisted in, with frequent changes of collecting agencies. Security of property was gone and to enforce payment by the tenantry many large estates were brought under direct management. But this last device also helped very little.

5. Eventually, the Parliament intervened, and Pitt's

India Act of 1784, and new policy.

India Act of 1784 (24 Geo. III, Chap. 25) was passed. This Act directed that the rights and privileges of the zemindars, *talookdars* and other landholders, must be respected and maintained, and that permanent rules must be framed and followed for determining the amounts of revenue (tributes, rents and services) to be paid by them. The result first was the framing of certain rules in 1789-90 for a decennial settlement, and finally the Permanent Settlement of 1793 by Lord Cornwallis.

6. The Proclamation of the Permanent Settlement

is reproduced in Regulation I of 1793.

The Permanent Settlement of 1793 :

For our present purpose, it may be read in two parts, *viz.*, *first*—recognition of the *status quo* of the zemindars as directed by the Statute ; and *secondly*—limitation of the public demand for ever, to the amounts then fixed. But the amounts thus fixed in Bengal districts, were not based on the rents and profits then actually derived by the zemindars, but according

¹ Yet it is an astounding fact that heavy drains were made upon the revenues of Bengal to meet the deficits in Bombay and expenses elsewhere and for the profits of the stock-holders of the Company. During the four years 1771-72 to 1774-75, the total of all revenues collected in Bengal amounted to 10 million sterling and the expenditure in Bengal was a little over 6 million. There was thus a surplus of about 4 million. During the next four years, Bengal's revenues totalled 11 million, and the expenditure in Bengal was about 5 million : Page 80 of Dr. P. N. Banerjee's " Indian Finance in the Days of the Company," *ibid.*

to what was the revenue demand in the year immediately preceding.¹ The result was that the revenue assessed by the Permanent Settlement, in the districts comprising the *Subah* of Bengal, still amounted to Rs. 220 lakhs or about 43 per cent. above the pre-famine revenue of 1756. The country was not given any chance of recovering from the effects of the famine and pestilence. No measures were taken for relief of distress, while rents and revenues were sought to be enforced with the utmost rigor; and as Providence willed, there were three more famines in Bengal, one of which was particularly severe in the eastern districts. The conditions had remained practically unchanged.

7. The most serious question thus was—how, with one-third of the peasantry gone, and an equal proportion of land reduced into waste and jungle, could such a high revenue be enforced? Lord Cornwallis's other measures to establish a stable form of administration, were taking effect, and he expected that in course of time the conditions would improve, population would increase and cultivation would extend to the areas then lying as waste or jungle, thus bringing in increased rental to the zemindars. But this was a question of time; and at the moment the revenue assessed in the Bengal districts was almost the same as the rents payable to the zemindars and *talookdars* by the raiyats. Lord Cornwallis held out to the zemindars that the State would not claim any share of the increased rental at any time in the future, but the zemindars must in the mean time submit to the assessment as then made. We cannot say what he would have done, if he was free to adjust the assessment according

—assessment 43
per cent. higher
than that in 1756.

Apprehensions
about realisation
of the high assess-
ment :

—hence strict
rules of punctual
payment.

¹ Section 68 of Regulation VIII of 1793 (Bengal Special Orders). There was an exception for small subordinate *talooks* which were treated then as independent

to the actual conditions of the time ; but a reduction of the revenue was the last thing which the Directors would have tolerated.

8. In these circumstances, the rules for enforcing regular payment of the revenue assessed, were necessarily stringent. Article 6 of the Proclamation declared that—
“ in the event of any zemindar * * * failing in the punctual discharge of the public revenue * * *

a sale of the whole of the lands of the defaulter or such portion as may be sufficient to make good the arrear, will

The sale-law in the Proclamation :

positively and invariably take place ” ; and it was further declared that “ no claims or application for suspensions or remissions, on account of drought, inundation or other calamity of the seasons, will be attended to.” Regulation

—other methods also retained.

XIV of 1793 which laid down detailed rules of procedure for realisation of arrears of revenue, provided also that other real or personal property of the defaulting zemindar might also be seized and sold (section 44). The earlier methods of arrest and imprisonment of the defaulter and temporary sequestration of the defaulting estate and direct management, were also retained (sections 4 and 22).

9. With the stringent provisions for peremptory sale of the estate in arrears, and even of other properties of the defaulting zemindar, it should not have been, under ordinary circumstances, necessary to continue the humiliating procedure of arrest and imprisonment. But the authorities feared, and with good reasons,¹ that sale

The rule of arrest and imprisonment of defaulting zemindar.

and liable to pay revenue direct to Government. In these cases only, a margin of 10 per cent. over the rental assets was allowed (section 75).

¹ An account of the sales of 1796-98, show that the sale prices hardly covered the arrears. In many cases there were no bids, and Mr. Ascoli in his “ Early Revenue History of Bengal ” states that in Dacca estates had to be re-settled at a reduced demand.

of the zemindar's estate might not fetch the arrears due, and therefore a certain amount of personal restraint was necessary. Section 4 of the Regulation thus laid down that—"if any proprietor or farmer of land, shall not have discharged a third of the instalment of any one month by the fifteenth of the ensuing month * * * * the Collector is positively enjoined to cause the defaulter to be imprisoned."¹ The rigour of this provision was, however, somewhat relaxed by Regulation III of the following year. This Regulation restricted such confinement to cases where the amount due might not be recoverable by the public sale of the estate or other properties of the defaulter (sections 3 and 14). These provisions about arrest and imprisonment remained in force throughout the Company's period. They became obsolete after Act XI of 1859, and were rescinded and repealed by Act VII (B. C.) of 1868 and the Obsolete Enactments Repealing Act XVI of 1874.

10. The provision for sale of properties other than the estate in arrears, in Regulation XIV of 1793, was restricted to cases where the whole amount due was not realised by the sale of the estate in arrears (section 44). The same rule was repeated in Regulation VII of 1799, section 23 (4).

Later, in 1801 it was laid down (Regulation I of 1801, section 3) that the previous sanction of the Governor-General in Council was required before such *other* properties could be seized and sold by the Collector.

¹ The only exceptions were—(1) if the defaulter furnished a proper security in a surety : but if the defaulter or the surety did not pay up the arrear with 12 per cent. interest within a specified time, both of them were liable to be imprisoned and the estate and all other properties of both were liable to be attached and sold : (2) if the zemindar disputed the amount demanded by the Collector : but the admitted amount must be paid in forthwith and a civil suit instituted by the zemindar regarding the Collector's amount within ten days. Failing these the consequences of imprisonment and sales would follow.

But at the same time, the Board of Revenue was empowered to distrain the personal properties of the defaulter whenever from the small extent, dispersed situation and inconsiderable produce of the estate in default, it was considered expedient to take such step. These provisions about seizure and sale of *other* properties, real or personal, remained also operative throughout the Company's period. They became obsolete after Act XI of 1859 which did not incorporate any such procedure, and they were ultimately repealed by Act XVI of 1874.

11. Sequestration by temporary dispossession of the zemindar and taking over the estate under direct management for a time, was the usual procedure adopted by the Mughal Government. The trial of such method during the period of the Company's administration between 1770 to 1789 had demonstrated that it was useless when the rental assets of the estate itself was low.¹ If the arrear-revenue was recouped by realisation of the current rents of the tenantry, there was little or nothing left for the fresh arrears. However, Regulation XIV of 1793 (sections 6 and 25) retained this procedure. Regulation VII of 1799 next provided for an additional process of attachment without taking over management. By Regulation I of 1801, the procedure of sequestration was restricted to special cases, and never to be undertaken during the first three months of the year. Regulation XI of 1822 repealed section 25 of Regulation XIV of 1793 but not section 6; but the procedure of sequestration was coming into disuse, though these Regulations were not formally repealed till Act XVI of 1874. In the mean

Rules of sequestration and temporary dispossession of the defaulting zemindar.

Development of the rule of attachment by proclamation forbidding tenants to pay rent.

¹ Mr. Westland in his Report on Jessore, cites the case of a portion of Pargana Muhammadshahi, where the rental on temporary *khash* management was only 1.63 lakhs, while the assessment was for Rs. 1.83 lakhs, and there was hardly any

time Act I of 1845 made the process of attachment without actual sequestration, more clear. It provided for a proclamation forbidding the under-tenants and raiyats to pay rent to the defaulting zemindar from the day following the last date of payment. This provision exists also in section 7 of Act XI of 1859 which is now the operative law.¹

12. The foregoing paragraphs give a brief account of the early methods of enforcing payment by imprisonment of the defaulter and seizure of properties other than the estate in arrears. It is not that the unconscionable nature of these methods was not understood; but the authorities had no choice. So long as the estate itself did not possess any market-value and thus did not afford sufficient security, the arrear could be paid only out of other resources of the zemindar. Provision for a procedure for enforcing payment out of other resources, where the zemindar had any, had therefore to be made, in addition to or simultaneously with the direct method of sale of the estate which was in arrear. These methods fell into disuse as in course of time and with the establishment of a stable form of government, increase of peasant population and extension of cultivation, the estate in itself acquired a good and sufficient value. Temporary sequestration also became confined to cases where on

—ceased when the estates themselves attained sufficient value.

arrear to collect from the raiyats. This was in 1787. The direct management was a failure, and the estate was restored to the zemindar, but still burthened with the accumulated arrears.

¹ This follows from the fact that the title of the auction purchaser takes effect from the day after that fixed as the last date of payment. See section 28 of Act XI of 1859 and Schedule A referred to in it. Also *Bhawani Koer vs. Afzal Hossain*, I.L.R. 34 Cal. 381 : *Muhammad Aga vs. Jadu Nandan Jha*, 2 C.L.J. per Mukherji J.

Under the early Regulations before Act XII of 1841, when no latest dates for payment were prescribed, except the *kists*, the auction purchaser could realise rents due for the year in which the sale took place. See *Khema Sundari vs. Nand Kumar Gupta*, 4 W.R. 75.

account of minority, sex or lunacy of the zemindar, his estate was taken over under the management of the Board of Revenue constituting the Court of Wards.

13. Yet sales of estates for arrears were very extensive. Estate after estate was knocked down,¹ and it was estimated that by 1812 more than half the estates in Bengal had passed out of the hands of their original owners. Revenue-sales became less frequent after 1822, *i.e.*, about 30 years after the Permanent Settlement. These 30 years were a period of great ordeal for the zemindars; and while some were able to maintain their position by paying the Government demand from their other resources, some lost their estates altogether and others had to be content with retaining a portion only of their original estates.

14. Article 6 of the Proclamation of the Permanent Settlement, declared that if the zemindar failed to discharge the public revenue, "the whole of the lands of the defaulter, or *such portion as may be sufficient* to make good the arrear," would be sold by public auction. Articles 9 and 10 then proceeded to explain how the *jumma* (revenue assessed on the entire estate) was to be divided in case of sale of portions of an estate, the general principle being that the *jumma* of the portions sold "shall bear the same proportion to their actual produce as the fixed assessment upon the whole of the lands of such proprietors, including those disposed of, may bear to the whole of their actual produce." The application of this rule in practice, was fraught with difficulties: for, there might be untenanted lands, and also *talooks* or intermediate tenures which, in spite of section 5 of Regulation XLIV of 1793 (which declared all

Extensive revenue-sales during the first 30 years after the Permanent Settlement.

Rules regarding sale of portion of an estate.

Difficulties of application, how tackled.

¹ See footnote, under para. 9 *ante*.



existing engagements as cancelled on the date of sale), were still protected by section 7 of that Regulation. In any case it was necessary to ascertain the assets of the entire estate; and Regulation I of 1801, therefore, enjoined that whether the whole or part of an estate was eventually sold, the entire estate must be attached in the first place and full accounts called for from the zemindars, farmers and their *Patwaris* and other officers. In case such accounts were not obtained or were not clear, the entire estate would be sold with the sanction of the Governor-General in Council (section 5). Sale of undivided share of an estate was also forbidden (section 11), and the Board of Revenue was authorised to direct sale of entire estates, instead of only portion when the *jumma* assessed did not exceed Rs. 500 (section 6). Section 25 of Regulation V of 1812 next laid down that sales were not liable to be annulled on the ground of the proceeds having materially exceeded the arrears,—that is to say, a larger quantity of land having been sold than what was sufficient to make good the arrear.¹ Section 6 of Regulation XI of 1822 next laid down that when the Collector proposed to sell a parcel of land appertaining to an estate or a fraction thereof, he should explain to the Board of Revenue the ground on which he fixed the proportional assessment, and section 5 laid down, amongst other conditions necessary to the validity of sales, that the permission of the Board or other authority exercising the powers of the Board, should be obtained previous to the sale.²

¹ See *Krit Chand Ray vs. Government and Kanailal and Gopal Lal Thakur*, 1 M.L.A., p. 383 (Feb. 1837), in which it was held that Government had an absolute discretion to sell either the whole or any part of an estate for arrears, without reference to the probable produce from the sale: and that excess in the value of the lands sold, over the arrear of revenue, did not vitiate the sale.

² A radical change was effected later by Act XI of 1859, which introduced a system of opening separate accounts by co-sharers: sections 10 and 11. The proportionate revenue of each separate account would be determined at the time

15. The *daul* (i.e., the original agreement of settlement with the zemindar), usually provided for monthly instalments or *kists*; and the revenue due for the *kist* of any month, if not paid by the first day of the following month, became an arrear.¹ Section 3 of Regulation XIV of 1793 required that the Collector, before proceeding to take action for sale, should first serve the defaulter with a notice of demand specifying the amount in arrear. This procedure was elaborated in Regulation VI of 1795 (section 7), VII of 1799 [section 23 (2)] and XXVII of 1803 (sections 3 and 7). But the service of a previous "demand-notice" was made optional in 1814, in cases in which an entire estate or the whole of the defaulter's right and interests in a joint estate was sought to be sold (section 2, Regulation XVIII of 1814). Regulation XVIII of 1814 was repealed and replaced by Regulation XI of 1822. This latter Regulation while at one place, viz., section 2 (2), abolished the previous provisions regarding "demand-notice," at another place, viz., section 5 (3), mentioned "due notice of demand" amongst the conditions necessary to validity of sales.²

the account is opened; and in the event of the holder of any such separate account defaulting, the interest only of such defaulting owner would be first put up to sale. If such auction did not fetch the arrear due, the sale would be stopped and the entire estate then notified for sale at a future date, unless the other recorded sharer purchased the share in arrear by paying to Government the arrear due, within ten days (sections 13, 14). This is the law now in force: and excepting this there is no other provision in this Act for the sale of a portion of an estate.

¹ Section 2, Regulation XIV of 1793, section 2 of Regulation III of 1794 and section 3 of Regulation XI of 1822. The meaning was made more clear later by section 2 of Regulation XI of 1859, now in force.

² The requirement of a previous demand-notice was finally done away with by Act XII of 1841, when certain permanent dates, irrespective of the *kists* in the *daul*, were announced as the "latest dates of payment" after the sunset of which dates no payment would be received to stop the sale. See also section 6 of Act XI of 1859. The revenue-sale law has since come to be known as the "sunset-law."



16. Section 13 of Regulation XIV of 1793 required the previous sanction of the Governor-General in Council before an estate or portion of an estate could be put to sale. This authority was delegated to the Board of Revenue by Regulation I of 1801. Regulation XVIII of 1814 (section 2), next laid down that the Collector might proceed to attach the lands of an estate without the previous sanction of the Board, but the actual sale was not to take place till the Board's approval was received. These previous rules were consolidated by Regulation XI of 1822, which also provided (section 24), that every sale required confirmation by the Board, before it could be final. The necessity of *previous* sanction by the Board (or Commissioner) was done away with by Regulation VII of 1830; but the rule regarding confirmation by superior revenue authority remained: the confirming authority being the Commissioner then, subject to appeal to the *Sadar* Board of Revenue.¹

17. Section 14 of Regulation XIV of 1793 provided that if the Collector demanded or exacted a larger sum than was properly due, the aggrieved party might "prosecute" the Collector in the *Dewany Adalat*. But there was no provision that irregularities in the Collector's proceedings might be questioned in the Civil Court, and the position was not clear till Regulation XI of 1822. Section 5 of this Regulation specified the essential conditions necessary to the validity of sales. These were—(1) that the lands appertained to the defaulting estate or were otherwise the property of the defaulter or his surety: (2) that previous

¹ For modifications regarding estates not permanently settled, see section 4 of Act XII of 1841.

sanction of the Board was obtained : (3) that due notice of the demand and the time and place of the sale had been given : (4) that *some part* of the demand in the notice or of the interest payable thereupon was due at the time of sale : and (5) that the sale was made at the notified time and place with due publicity and freedom. The Board of Revenue or any other authority exercising the powers of the Board might annul a sale for breach of any of these conditions, and their order in such case would be conclusive. But if they confirmed the sale, the former zemindar was at liberty to institute a suit in the *Dewany Adalat* on these grounds (section 25). Discretionary power was given to the Court to award damages instead of setting aside a sale, if circumstances justified (section 26). The Civil Court, however, could not interfere unless the irregularity was of any of the kinds mentioned above : and to remove any doubt in this respect section 4 explained that once a sale was duly confirmed by the superior revenue authorities, it " shall not be liable to be annulled, set aside or altered by any Court of Judicature, on account of any error, or irregularity in the previous process," except any error, irregularity or omission in respect of the conditions specified, *viz.*, the same as mentioned above.¹ This was the position during the rest of the Regulation period.²

¹ An extreme instance arose in *Robert Watson vs. Sreemunt Lal Khan* (1854), 5 M.L.A., p. 447, in which Government, after the confirmation of sale, came to know of some irregularities (not covered by the above specified conditions), and made an amicable arrangement between the defaulting proprietor and the purchaser. A *mukararidar* holding a tenure created in 1818 (*i.e.*, after the Permanent Settlement), and whose tenure thus became liable to be cancelled, objected. The Privy Council held that the sale was valid and the Courts could not interfere. The sale in this case took place in 1837.

² There was some minor modification by Act I of 1841, and the main provisions (excepting sections 36 and 38) were repealed and replaced by Act XII of the same year. This in its turn was repealed by Act XI of 1859, which is now in force.

18. Several Regulations provided for interest on arrears and even a penalty of damage. Regulation XIV of 1793 (section 7) laid down that interest at the rate of 12 per cent. per annum, would be charged when it appeared that payment had been wantonly withheld. Regulation III of 1794 (sections 4 and 6) laid down that the interest was to be payable in all cases, even though the estate might be eventually sold for the arrear. Regulation I of 1801 (section 2) provided for a penalty of one per cent. per month, in addition to the interest. This was modified by Regulation V of 1812 (section 28) which retained only the interest at 12 per cent. per annum. Regulation XII of 1824, however, revived the penalty in addition to the interest, and the two were consolidated and made 25 per cent. per annum by Regulation VII of 1830 (sections 2 and 8), "from the period on which instalment may become payable until the date on which the arrear may be discharged." Regulation VII of 1830 was repealed by Regulation XII of 1841, when both penalty and interest were abolished. Interest has been revived¹ by the recent Bengal Act XVII of 1935. The rate laid down in this Act is $7\frac{1}{2}$ per cent. per annum.

19. Section 5 of Regulation XLIV of 1793 laid down that—"whenever the whole or portion of the lands of any zemindar" was sold for arrears of revenue, all engagements with "dependent *talookdars* whose *talooks* may be situated in the lands sold, as also all leases to under-farmers and *pattas* to raiyats for the cultivation of the whole or any part of such lands * * * shall stand cancelled from the date of sale." It further stated

Effect of revenue-sales on under-tenants: Regulation XLIV of 1793.

¹ Really revived by executive order, from 19th January, 1933; and hence the recital in the Preamble that it was expedient "to provide for the removal of any doubts as to the liability to pay interest on arrears of revenue."

that the purchaser would be at liberty to demand fresh rents "according to the usages and rates of the pargana" on the supposition that "the engagements so cancelled never existed." The only exceptions were *talooks* exempted from any increase at the time of the Decennial Settlement, and leases "for the erection of dwelling houses or buildings for carrying on manufactures, or for gardens or other purposes, and for offices for such houses or buildings."

20. Even assuming that it was right in theory, that the purchaser should get the estate as it was at the time of the Decennial Settlement, the provisions were too drastic, particularly as they did not make any exception of *bona fide* raiyats and cultivators, and even the older *khudkast* raiyats, the protection of whose interest was, as avowed in the Proclamation of the Permanent Settlement, the particular concern of the Government. The only explanation is that the authorities, conscious as they were of the excessive assessment, were nervous about the revenue, and sought to place the purchaser in as advantageous a position as possible, so that he might at any rate bid sufficiently high to cover the arrears. But, probably, this provision did not actually cause as much mischief as theoretically it was liable to. The peasant population had dangerously dwindled, and large quantities of land lay waste and uncultivated. The demand for men to cultivate the land, was great, and in fact the records of the period show how a zemindar of one estate often attempted to "kidnap" cultivators from another estate, offering more favourable terms and concessions. This perhaps was the reason why we find no mention of any serious misuse of this drastic power given to a revenue-sale purchaser, and for a number of years there was no attempt in any Regulation to modify this provision, except that by Regulation IV of 1794 a raiyat who held under a *patta* for a term of years

Not probably so
mischievous at first :

was given the right to renew it even against a revenue-sale purchaser, provided he agreed to pay rent at the "established paragana rate." We will not digress here with discussion of what exactly was meant by this expression, and how it was really not of much help to the raiyat. But the table was turned when, with the gradual increase of population and extension of cultivation, the zemindar came to be more at ease and in a better position to enforce his terms when he wished. There was another

contributory cause which operated to create a greater demand for land. It was unfortunate, but since the change of policy and other circumstances which became marked from about 1817, local industries such as manufacture of salt and weaving, rapidly collapsed. The result was that a large population, perhaps several millions, had to seek land for their living. It was thus not too early that

—but
acute from position
1817. about

Regulation XI of 1822 sought to improve the position of the raiyat. Section 32 of this Regulation gave complete protection to the old *khudkast* raiyats of the time of the Permanent Settlement (called in it *khudkast kudeemee*), and as regards the rest their holdings would not stand automatically cancelled, but were only voidable. The general principle laid down (section 30) was that "tenures which may have originated with the defaulter or his predecessor * * * as well as engagements with the raiyats or the like * * * subsequently to the Settlement (the Decennial Settlement) * * * shall be liable to be avoided and annulled by the purchase of the estate or *mahal* at sale for arrears due on account of it;" and with regard to the cultivating class section 33 saved, generally, "the title of raiyats to hold their lands, subject to the payment of fixed rents, or rents determinable by fixed rates according to the law and usage of the country." The net result

Relief by Regula-
tion XI of 1822:

of these provisions was that the continuity of occupation by the raiyat was not impaired by revenue-sale of an estate,¹ and if the purchaser desired to enhance the rent, he could do so only in accordance with the rules laid down. The point of difference between a holding existing from the time of the Permanent Settlement (*khudkast kudeemee*) and a holding created afterwards, was, in effect, that the rent of the former could not be increased, while in the case of the latter it was liable to enhancement according to the rules, but the raiyat was not necessarily liable to displacement.² There was a retrograde provision in Acts I and XII of 1841 during the Company's time, but the above principle was established by Act XI of 1859, and more definite rules as regards enhancement were laid down by Act X of the same year, and later by Bengal Act VIII of 1885.³

21. The Regulations of 1793 maintained the authority of the zemindars to distrain the crops and other movables of a defaulting tenant, without recourse to the Court or the Collector; but certain restrictions and remedies for abuse were simultaneously laid down. The authority of the zemindar to arrest and keep under custody a tenant who failed to pay arrear,—a practice not uncommon during Mughal period,—was abolished. Perhaps in the circumstances of the time, it would not have been politic to go further than this. It satisfied the prestige of the zemindars, who were otherwise subjected to so much drastic rules for punctual payment on their part, and to the ordeal

Retention of zemindar's powers of distraint.

—perhaps politic in Lord Cornwallis's time, when taken with his other innovations.

¹ It was thus that the rule of occupancy right by 12 years' possession became established whether the raiyat was a resident of the village or not. See the exposition by Trevor J. in the Great Rent Case, *Thakooranee Dossee vs. Bisweswar Mukerji*, 3 M.L.A. 29 (Act X Rulings).

² See the exposition in the Great Rent Case, *ibid.*

³ For a fuller account, see Chapter X of "Land System of Bengal."

of having to pay a high revenue which they could hardly meet from the rents they realised from their tenants. This would seem to be the only explanation for these provisions, otherwise inconsistent with the principles avowed by Lord Cornwallis in the Preambles to many of the Regulations of his time. The sincerity of his solicitude for the welfare of the peasantry and of the people of the Province in general, is unquestionable. His own motives were high, both for the people of the country as well as for the good name of the British nation. But in the midst of his surroundings, and under influences from abroad, he had to proceed with caution, and abandon in some respects his own ideals.

22. The unfortunate part of the story, however, is that his successors did not follow his high intentions. The theory that the zemindars must be given large powers over their tenantry, because otherwise they could not be expected to pay the Government revenue punctually, was introduced later. So it was that still larger powers were given to them by Regulation VII of 1799, the notorious *haftam*, and Regulation V of 1812, the *pancham*, which blackened the statute book throughout the rest of the Company's period.¹ Regulation VIII of 1819, the *Patni* Regulation, which provided for a summary method of sale of large tenures of this description, was a very mild measure compared with the large powers which the zemindars had over the smaller tenants and the peasantry. And it cannot be overlooked that these powers meant much more than what appeared on the face of the *haftam* Regulation; because many of the zemindars exercised also the function of *Munsifs* over their tenantry and had jurisdiction to receive, try and decide their claims

But not so later, though the powers of zemindars still further enlarged.

¹ For a fuller account, see Chapter X, "Land System of Bengal."

and disputes about personal property and debts, though within certain monetary limits.¹

23. The Permanent Settlement of 1793 had left all lands claimed then as *lakheraj* (revenue-free), whether under a grant from the *Badshah* (called *Badshahee*) or otherwise (called *Non-Badshahee*), for further assessment of revenue, if the claims were found to be invalid. Regulations XIX and XXXVII of 1793 laid down the rules according to which such claims were to be investigated; but no systematic proceedings for resumption were taken up till after Regulation II of 1819. Questions arose at this time also for assessment of *chars* formed in the beds of rivers and of extensive areas of waste and jungle (such as the Sundarbans) which were situated outside the limits of the permanently settled estates. Regulation XI of 1825 laid down the rules for judging whether and under what circumstances an alluvial formation would be liable to assessment; and Regulation IX of 1825 extended the provisions of Regulation VII of 1822 for the detailed procedure of revenue-officers. An account of these various kinds of resumptions and new settlements after 1793, has been given in Chapter XII of "Land System of Bengal," and we will not repeat it here. But one important feature of these proceedings to which reference has already been made in Chapter IV *ante*, was the special judicial authority given to the Collectors, to the exclusion of Civil Courts, by Regulation III of 1828, of deciding the substantive question whether the particular land was or was not liable to assessment, any appeal lying to the Special Commissioners appointed under the same Regulation.

¹ The rule of vesting zemindars with powers of *Munsifs* over their tenantry, was rescinded in 1803. It is, however, interesting to note that the reason stated then was that with the larger powers given by Regulation VII of 1799, the zemindars did not need further powers as *Munsifs*. See Chapter IV *ante*.

24. Another important feature of these settlements under Regulation VII of 1822, was that the idea of permanently fixing the assessment was given up, and excepting in cases of resumption of invalid *lakheraj* and

Permanent Settlement policy given up in 1822-25.

certain cases of Police *chakran* lands, the settlements were only for a term of years.¹

The methods adopted for determining the amount of assessment were also different. A detailed survey was made of all lands sought to be subjected to the settlement and a record showing the rents and other incidents of the subordinate tenancies was prepared. The assessment was then made so as to leave a margin of 20 per cent. to the proprietor after deducting the cost of collection.² The decisions of the revenue-officers in the preparation of the record, were final; but it is interesting to note that sections 6 to 8 of Regulation IX of 1833 had a provision which permitted the Collector or his Deputy to refer "any judicial question" when occasions required, to arbitration by a *Panchayet* of "three or five impartial and otherwise competent persons, of good repute, for the trial of the matter at issue."

The land-revenue assessed in 1793 has remained the same; and so also the revenues assessed on resumed *lakheraj* lands which were also fixed permanently. In Bengal, as now constituted, the total revenue of the permanently settled estates is Rs. 215.15 lakhs giving an incidence of annas 9 an acre. The temporarily settled estates yield a revenue of about Rs. 26 lakhs giving an incidence of about annas 13 per acre. The estates under direct management

Amount of land-revenue now in Bengal.

¹ British rule was then firmly established, and the circumstances which necessitated a permanent settlement in 1793 no longer existed. See page 248, "Land System of Bengal."

² Section 7 (2) of Regulation VII of 1822: The cases of Sundarbans where the main question was clearing the jungles and reclamation, were different. See page 267, "Land System of Bengal."

of Government, yield a revenue of Rs. 68.19 lakhs giving an incidence of Rs. 2 per acre.¹

25. Regulation II of 1793, laid down the machinery for the administration of land-revenue. The Collectors of districts were to be in charge in their respective jurisdictions, directly subordinate to the Board of Revenue, established in 1786.² Section 29 of Regulation II of 1793 laid down that the Board of Revenue was to consist of "a President and four other members," and they were generally charged with the "superintendence of the settlement and collection of the public revenue from the land, and of all other matters entrusted to the Collectors." The Board was required to meet at least on two days every week, and two members were sufficient to form a quorum. The President was to prepare every "resolution," and the opinion of the majority (the President having the casting vote in case of equality) was to prevail.

But a member might record his dissent. The Regulation did not contain any provision for interference by the Governor-General in Council, but it was laid down that the Board was "to report to the Governor-General in Council all subjects of importance which may require his sanction

¹ This gives a general idea of the proportion of the basic rental assets (the rents of the *raiyats*) which goes for the cost of management and collection by the zemindars and all intermediate tenure-holders, and their profit. See Introduction in "Land System of Bengal."

² A revenue-functionary under the name of "Board of Revenue" was first constituted in 1772, consisting of the Governor and members of his Council and an Accountant-General with his assistants. But this body was soon substituted by what was called "Committee of Revenue," under the orders of the Directors in November, 1773. This Committee consisted of two members of the Council and three senior civil servants of the Company. Simultaneously there were five Provincial (or Divisional) Councils under the Committee. This plan was revised in 1786, when under the orders of the Directors, the Committee of Revenue was replaced by the Board of Revenue, with powers and duties as laid down in Regulation II of 1793.

or special instructions, before the execution of any final resolution on them." Two complete sets of the proceedings of the Board were to be submitted to the Governor-General in Council every month, and one of these copies was then to be transmitted to the Hon'ble Court of Directors (section 64).

26. While the Board was generally authorised to pass orders on all settlements of land and to give directions to the Collectors in all matters connected with collection of revenue, maintenance of the necessary registers and accounts, the authority to grant remissions was reserved with the Governor-General in Council (section 43). The Board could, however, grant temporary suspension of revenue, reporting the matter forthwith to the Government (section 42).¹ "The appointment and dismissal of all native public servants in the establishment of the Collectorships (the keepers of native records and the *khazanchee* excepted) " were vested in the Collectors, but they were to intimate the Board of Revenue forthwith (section 13). This provision was repealed by Section 3 of Regulation V of 1804, which was a general Regulation providing for the appointment, etc., of native officers in all departments. The Collectors' orders required confirmation by the Board.

Three Boards of
Revenue in 1822.

27. In 1822, three Boards of Revenue were constituted for the Lower, Central and Western Provinces respectively, the limit of the Lower Provinces extending so far to the north-west as to include the districts of Bhagalpur and Purneah. The number of members was not fixed, but under Regulation III of 1822, the number of members might be such "as the Governor-General in Council may from time to time appoint." An important set of rules

¹ Sections 42 and 43 are still in force.

in this Regulation provided that a single member of the Board might exercise such functions as the Governor-General in Council might allot ; but when the member differed from the Collector he was to obtain the concurrence of one or more of the other members. The Board was also authorised to " review, rescind, alter, or confirm " any decision of theirs, if on representation by any party interested the case appeared to merit further investigation.

Powers of a single member.

28. The Commissioners of Revenue and Circuit established by Regulation I of 1829, were, so far as revenue matters were concerned, an intermediate controlling authority between the Board of Revenue and the Collectors. They exercised for some time the judicial functions of the Courts of Circuit in criminal cases ; and when these latter functions ceased, they retained their general position as " confidential advisers of Government " in all matters connected with the administration. Section 4 of this Regulation laid down that, subject to the control and direction of the Board, and to such restrictions as the Governor-General in Council or the Board might prescribe, the Commissioners would possess and exercise within their Divisions, the powers and authority which were then vested in the Board of Revenue and the Court of Wards.¹

Divisional Commissioners in 1829.

29. The foregoing account of the functionaries for the administration of land-revenue, elicits the fact that all responsible offices were allotted to European officers

¹ This provision is still in force.

The term " Commissioner " had its origin from the " Special Commissioners " appointed in connection with settlement and resumption proceedings under Regulations I of 1821 and III of 1828 : see para. 23 *ante*. The functions of these Special Commissioners, when their offices ceased, merged in the Commissioners of Divisions.

of the Company. This was in pursuance of the policy announced by the Directors in 1771, when they determined to take over the management of the Dewany from the native agencies previously employed, to the hands of their own civil servants. For a

Employment of
native revenue-
officers : Settle-
ment officers and
Deputy Collectors :
1822-23.

time native *Aumils* or *Diwans* were employed in the districts, but this plan was soon given up. The policy indicated by the Court of Directors in their letter of 12th April, 1786, (para. 19) was, to state generally, that the natives of the country might be employed with advantage to "duties of detail" such as in the staff of *Ameens* (surveyors), *Canangoes*, zemindary *dafter*, etc. For a time the Collectors needed the advice of a native officer, and we find mention of *Diwan* to the Collector in Regulation II of 1793. This functionary ceased shortly after, and natives employed in the revenue offices consisted of ministerial officers, accountants and treasurers (*khazanchees*). The Charter of 1793 reserved the principal civil offices in India for the covenanted civil service then constituted. The permanent settlement of land revenue concluded with the zemindars by Lord Cornwallis, was believed to close the necessity of any elaborate staff for the administration of land-revenue. But difficulties were first felt from the application of the rules of sales of portions of estates and division of the revenue-demand in proportion to the assets. Much was left in the hands of low-paid ministerial staff, and "abuses" and "frauds" to which there are frequent mentions in the Regulations were only natural. Matters came to a head when extensive proceedings for resumption of invalid *lakheraj* and new settlements were taken up on the passing of Regulation II of 1819. These proceedings required a considerable amount of detailed responsible supervision for which the covenanted service was either inadequate or too expensive. Natives of

respectability and education came thus to be appointed¹ as Settlement Officers or Deputy Collectors to whom reference is made in Regulation VII of 1822 and other subsequent Regulations. Eventually, Regulation IX of 1833, passed during the administration of Lord William Bentinck, formally recognised this subordinate service, and laid down the terms and conditions of the appointment of this class of officers. The appointments were to be made by the Governor-General in Council, and every officer had to take an oath of office before assumption of charge. Various Regulations laid down their functions and powers, and all proceedings of a Deputy Collector were required to be in his own name and hand and on his own responsibility,² subject to revisional or appellate powers of the Collector.

30. The permanent settlement with the zemindars was effected in the form of an agreement called generally *Daul*, in which the total amount payable and *kists* or instalments (usually monthly) by which it was to be paid, was specified. It was obviously necessary that a Register should be maintained showing the names of the proprietors, their shares, and all changes by sale, gift, division or succession. There had not been any regular survey, and the utmost that could be done was to obtain a list of villages (with boundaries³ whenever possible), or approximate areas, and the total rental from the raiyats. Regulation XLVIII of 1793 thus laid down the rules for the preparation and maintenance of such a Register. It

¹ The Parliamentary Committee on the question of Indianisation of the services which was appointed at almost this time, submitted their report in 1822, urging that such employment of natives "would strengthen their attachment to the British Dominion, would conduce to better administration, and produce great saving in expenditure."

² Section 32, Regulation IX of 1833.

³ Where supplied or maintained, these are commonly called *Chauhaddi-bandi* or *Hudabandi* papers.



was called the Quinquennial Register, as the plan then was that it would be revised every five years. For intermediate changes, as well as for the five-yearly revisions, the zemindars were made liable, on penalty of fine, to furnish all information to the Collector (section 25); and what happened usually at every revision was that the zemindars submitted a statement in the form of the Register kept by the Collector.¹

This Regulation of 1793 remained operative throughout the Company's period. The five-yearly revision, however, generally came into disuse, and was formally abolished by the Obsolete Enactments Repealing Act XVI of 1874. The Act which is operative now is the Land Registration Act of 1876 (Act VII of 1876).

¹ Regulation VIII of 1810 abolished the requirement of specification of villages.

CHAPTER VI

CUSTOMS AND INLAND DUTIES

Vincent Smith writes in his History that the numerous details recorded by the Greeks and by Kautilya prove beyond doubt that in the 4th century B.C., extensive commerce, both internal and foreign, was carried on throughout India, and there was active intercourse for business purposes between all parts of the country. Bengal was no exception. In fact its situation with 300 miles of sea washing its base and over a hundred violent rivers accustoming the people to struggles in water, communication across the Bay with the long peninsula, China, Java and the islands in the eastern archipelego, was only natural. In the *Mahabharata* we find mention of large boats and navies maintained by the kings of Bangadesh. Kautilya's *Arthasastra*¹ (about 300 B.C.) gives particular importance to overseas trade, and enjoins favourable treatment of mariners (*navika*) and merchants who imported foreign merchandise. Coming down much later, we have the Portuguese accounts of their extensive trade in Bengal. The port of Satgaon, a few miles above Hooghly, was called by them *Porto Piqueno* and that at Chittagong *Porto Grande*. Bandel owes its name from *Bandar* meaning "port."² Overseas trade increased greatly during the

¹ Arthasastra, Chapter XVI. We pass over the legendary account of the conquest of Singhal or Lanka by Bengal's prince Bejoysingha and his adventures across the seas.

² Some maintain, however, that it is from the Portuguese equivalent of "Church."

Pathan period,¹ and Abul Fazl in his *Ayteen-i-Akbari*, written at the beginning of the Mughal period, says that there was a very prosperous sea-borne trade in *Subah* Bengal, and diamonds, emeralds, pearls, agates and corne- lians were brought from other countries to the seaports of this *Subah*. With the closer links established by the Muhammadan Government from Delhi, trade over and across the other parts of Hindusthan also increased consider- ably.² Shore, in his minute of 18th January, 1786, writes that "every information from the time of Bernier³ to the acquisition of the Dewany, showed the trade of the country, as carried on between Bengal and the upper parts of Hindusthan, the gulf of Moro, the Persian gulf and the Malabar coast to have been considerable." He continues— "Returns of specie and goods were made through these channels, and in gold dust for opium, from the eastward."

2. Kautilya in his *Arthasastra* devotes several chapters on industries, trade, weights and measures and tolls on goods carried into cities or large marketing places for trade. There was a special officer called Superintendent of Commerce,⁴

Levies on trade,
in *Arthasastra*.

¹ Bengal muslin and in particular *kushidas* for turbans became famous at this time.

² Manouchi, the Venetian physician to Emperor Aurangzeb, wrote as follows in his book published in 1702 :—

"Bengale is of all the Mogol kingdoms the best known in France. The prodigious riches transported thence every year into Europe, are proofs of its great fertility. We may venture to say, it is not inferior in any- thing to Egypt, and that it even exceeds that kingdom in its product of Silks, Cotton, Sugar and Indigo. All things are in great plenty here: Fruits, Pulse, Grain, Muslins, cloth of gold and silver."

³ Bernier wrote that—"all the silver of Mexico and all the gold of Peru, after having circulated (in trade) sometime in Europe and Asia, centre at last in the Mughal Empire from where it never returns." The route, he states, was from Turkey into Persia, and then by way of Smyrna, Bassora and Bandar Abasi. Some went directly by the trade of Holland and Portugal; and almost all the silver they got from Japan, was carried to India.

⁴ Besides this official, there were Municipal Boards which regulated sales and enforced the use of authorised weights and measures. There were also special

and the standard weights were stamped to ensure their genuineness. Merchandise when brought into a city or exported from it had to pay a duty at the city-gate. The rate was generally 10 per cent. *ad valorem*,¹ but for articles such as grains, oil, sugar, cloth, yarn, wood, bamboos, etc., it was 4 to 5 per cent., and for comparative luxuries like flowers, fruits, dried fish—it was higher. Besides this duty and outside the city boundaries, a toll was levied for transport² by road or river, ferries and bridges.

3. This levy on goods which were the products of the country, was really of the nature of an excise-duty charged on home-manufacture, or more correctly a combination of excise and income-tax. Strictly speaking, only the levy made on foreign goods or goods exported to foreign countries, was of the nature of customs³ proper. However, imposts on trade and transport in these three forms seem to have been well established; and even much later in

Character
these levies :

of

Boards for the superintendence of industrial articles, in particular weaving and cloth manufacture.

The external trade was called *Bahyan*, the internal trade—*Abhyantaran*, foreign trade—*Atithyan*. Export duty was called—*Nishkranya* and import—*Pravesyam*.

¹ The calculation was made on actual sales at the gate. The passage runs—“During the 8th part of the day they (the merchants) shall submit to the Superintendent the sale-report, saying—this much has been sold and this much remains.”

There were special rules when articles of foreign manufacture were taken by barter, *i.e.*, exchange with other goods.

² This was called *variani* and the rate was one—and—a quarter *pana* for each cart-load of merchandise, and reduced rates for head-loads and for animals. Besides this, merchants paid a licence tax, and the trader who dealt in more than one class of commodity paid double: Vincent Smith, “Early History of India,” p. 121.

³ “Customs duties” mean strictly the taxes levied upon goods passing from one country to another. In the long conflict between the Crown and the Parliament the levy of this tax was claimed as based on “custom” or practice from time immemorial, which in Europe is believed to date so far back as the history of ancient Greece. Customs duties were levied in England even before the Conquest: and it is said that Ethelred established duties on ships and merchandise to be paid at Billingsgate in the port of London about 979 A.D.

the Muhammadan period they were more or less of the same character. Under the Mughal administration, these imposts were included in the general account of *Sayer*, which meant the variable revenue arising from moveable property in contradistinction to *Mal* or land-revenue. The inland duty was levied directly by the Government at the capital city only, viz., Rajmahal, Dacca and Murshidabad successively, as the capital changed.¹ The customs duty on foreign trade was levied directly at the *Shah Bandars* or royal ports on the river Hooghly, at Dacca, and perhaps also at Chittagong. Besides these, there were transit duties (*Sayer Chalanta* or *Sayer Chilke*) which were levied through the zemindars and accounted for in the land-revenue which they paid. The rate of the customs duty for export to or import from foreign countries, as well as for import into the capital city, was two and half per cent.² No clear account of the transit duty or taxes on shops and *gunjes* (market-places) which passed as zemindary *Sayer* is available; but from the nature of these taxes and from the lax administration particularly during the latter period of Mughal rule, the assessment must have been very irregular, and probably harassing and oppressive. However, whatever

—generally continued to the Muhammadan period.

Port duties at *Shah Bandars*.

Transit duty or *Sayer* through zemindars.

¹ Grant, in his Analysis of the Finances of Bengal, describes this under head "Sayer Chunakahly," which comprised "taxes on houses, shops, bazars, (licenses for vending spirituous liquors, &c.), duties on exports of raw-silk and piece-goods manufactured in or about the city of Murshidabad, and passing by the *pan-chautra* stations on either branch of the Hooghly river, forming the island of Cossimbazar: ground rents, customs or tolls of established *ganjes* or granaries at bridges, ferries, passes, etc., together with the exclusive farms of betelnut, and such like articles of internal consumption." All these items gave a *toomary* (total) jumma of Rs. 3,11,603/- in 1728. Minute dated 27th April, 1786. See Firminger, Vol. II, p. 404.

² Grant mentions the export and import duties as "5 per cent. on the merchandise of Hindoos, and 2½ per cent. on that of Mohammedans or of the foreign privileged companies;" but his calculations are at the rate of 2½ per cent.

the revenues obtained from all these different sources, they underwent a steadily increasing fall since the English Company obtained their privilege of "free-trade" from Emperor Furrok Sher in 1717.

4. Grant in his Analysis¹ states that during the Subahdarship of Shujauddin (1728), the revenue from *Sayer Buksh Bandar* (export and import, customs, foreign merchandise) levied at $2\frac{1}{2}$ per cent., amounted to Rs. 2,21,975. The revenue from inland customs (called *Panchautra*²) included under *Sayer Chunakhahly*, amounted to Rs. 3,11,603.³

5. But the trade from the interior had begun to be rapidly diverted from Murshidabad. The Company had their commercial agents throughout the country, and their organisations, coupled with the advantage that goods passed through them were exempted from duty, tended to concentrate traffic to their own settlement at Calcutta. This became particularly marked after the "revolution" following the Battle of Plassey, and, as stated by Grant, thenceforward a deficiency appeared progressively in the Mughal revenue, "in proportion to the prevalence of British influence, the exemptions on the Company's trade, and gradual removal of the emporium of commerce from former site to the port of Calcutta." The Company, however, had already established on their own account and profit, a port-duty at Calcutta at the rate of 4 per cent. *ad valorem* on foreign imports and 2 per cent. on goods brought from

Customs revenue
in 1728.

Diversion of trade
to Calcutta.

Company's own
duty of Calcutta
customs.

¹ Minute of 26th April, 1786, *ibid*.

² Firminger states that this is from Sanskrit *Panchottar* meaning a custom-house for collecting inland duties.

³ This included ground rents of 37 markets and *gunjes*, taxes on shops and bazars, duties on exports of raw silk and piece-goods: and probably also *abkari*. The figure for the previous years, exclusive of *abkari*, is stated as Rs. 2,97,941. See footnote, last page.

the interior of the country or "inland imports." This duty, Grant observes, was levied originally (he believed) "to defray the expense of pilotage¹ up and down the river Hooghly": but, as we shall see hereafter, it was claimed later as founded on the "ancient factorial rights" of the Company at Fort William. The levy, however, did not affect the Company's own trade: it affected independent native trade² and the trade with other countries as "France, Holland, Denmark, Italy and the dominions of Portugal."

6. So it was that in the year just preceding the Dewany, the Mughal *Sayer* on the Hooghly fell to Rs. 1,42,883, and two years later to Rs. 1,25,000. In 1783 it dwindled to only Rs. 62,644. Correspondingly, more or less, the Company's revenue from their own duty at Calcutta rose to Rs. 3,32,496. The situation was, of course, materially

Mughal or Government customs and Company's Calcutta customs in 1764.

¹ Grant states that on the 5 years' medium ending with 1784-85, these expenses amounted to Rs. 71,431/- only per year, while the gross receipt was Rs. 4,38,923/- "leaving a clear produce of Rs. 3,66,492/-" per annum.

² Regarding the effect of this and particularly the Company's commercial activities through their own officers, the following quotations from Seir Mutaqhirin (1784) are interesting. The author Syed Ghulam Hossain Khan, when pointing out the various causes which had led to economic distress and depopulation, says—"the English have deprived the inhabitants of these countries of various branches of commerce" (Vol. III, section 14): and further on—"of the various branches of trade heretofore open to all, none is free. They are all engrossed by the Company themselves or by the English in general; as these, whether they enjoy the Company's service, and of course have power and influence, or chance to be otherwise circumstanced, very seldom are without concerns in trade. But, if with all that, it happens that most of the superior military officers, whilst showing a shyness for trade, are really merchants invested with high power and authority, how can the poor subject pretend to derive a subsistence from merchandising? Would they dare it? On the other hand thousands of artificers cannot earn enough to support their families, as has been shown a little above, because their arts and callings are of no use to the English." In a letter to Clive, dated the 26th March, 1762, Mir Kasim wrote:—"From the Factory of Calcutta to Cossim Bazar, Patna and Dacca, all the English chiefs, with their *gomosthas* and agents in every district, act as collectors, renters, zemindars and *talukdars*, and setting up the Company's colours allow no power to my officers. And besides this, the *gomosthas* and other servants in every district, in every pargana and village, carry on trade in oil, fish, straw, bamboos,

altered after the acquisition of the Dewany of the entire *Subah* in 1765. But a distinction was maintained between the two levies, *viz.*, the latter as custom- or port-duty of Calcutta levied in the Company's supposed "ancient factorial rights," and the former as "Government custom" or duty levied in their authority of being the sovereign power. Henceforward, the regulation of the whole of the trade policy, and with it the correlated questions of Bengal's industries *versus* English products (and the Company's own shipping *versus* other shippings) passed into the hands of the Company.

7. The position of the Company after the Dewany, was peculiar. They were, as aptly stated by Shore,¹ "merchants as well as sovereign of the country. In the former capacity they engrossed its trade, whilst in the latter, they appropriated the revenues." The term "appropriate" was quite the correct term to be used. The revenues they derived from Bengal were not the revenues of a State as we understand "State" to-day. They were the revenues of the Company, a good portion of which went for the benefit of their shareholders, for the cost of the Board of Control in England and for the British exchequer.² The deficits in other Provinces and, in later years, the costs of the wars of annexation and subjugation in India, were all met from the revenues derived in Bengal.³ No doubt many reforms, commencing from Warren

—how it affected
their financial
policy.

rice, paddy, betelnut, and other things; and every man with a Company's *da-tuck* in his hands, regards himself as no less than the Company."

¹ Minute, dated 18th June, 1789, para 131.

² Under the two Acts of Parliament passed in 1767 and 1769, the Company had to pay £400,000 per annum to the British Exchequer. The actual amount paid up to 1788 was, however, £3,161,451. See para. 18, Chapter XIII.

³ The total revenue of Bengal during the 4 years from 1765-66 to 1768-69 was £9 million, and the total expenditure in Bengal only £5 million, leaving a net surplus of £3 million. The total of the deficits in Madras and Bombay during

Hastings, for the establishment of law and order and for eradicating many social evils, were undertaken, but many other benefits such as for local industries, education and health, and general uplift of the people, which could be conferred in Bengal with the surpluses of the revenue which its people paid, were missed. Much of this was the result of the financial policy, and in particular the policy regarding trade, which was pursued; and the judgment of the publicists of later years, and even contemporary critics, have not been commendatory to the Company. The position changed only after the renewal of their Charter in 1833, when they were divested entirely of their commercial occupations, and finally on the assumption of direct Government by the Crown in 1858.

8. But to resume our subject of customs and trade, for some years the old arrangements were continued. With the greater powers obtained, the activities of the Company's commercial agents rapidly tended to the establishment of practical monopoly of trade in respect of the products of the country. The "Government customs" of $2\frac{1}{2}$ per cent. on trade other than that with the Company's investments, was continued at Calcutta, Hooghly, Murshidabad, Dacca and Patna; and besides this the Town Duty of 2 per cent., for import of all country goods into the city of Calcutta, was also retained. There was further the levy of a 4 per cent. export-duty on such of these goods as were exported from the port of Calcutta. The *Sayer*, levied by the zemindars for transport in the interior and on shops, *bazars* and *gunjes*, was also continued.

this period was about £ 2 million, and these were met from Bengal revenues. Even during the famine years 1769-70 and 1770-71 when the revenues of Bengal fell by over 20 per cent., there was surplus of over £1 million which was diverted to meet the deficits of Madras and Bombay.

9. The evil effects of this multiplicity of taxes on trade were not properly realised till twenty years after the Dewany.¹ Grant in his minute of 1786, pointed out that the double charge of "Government custom" and "Town Duty" at Calcutta was "uneconomical and wholly unnecessary," thinking, as he was, even from the Company's revenue point of view. The Government custom of $2\frac{1}{2}$ per cent. on imports at Calcutta and in the several cities, was abolished in 1788, and later in 1790 the zemindari *Sayer* was also abolished. Thenceforward, all merchants could carry their goods throughout the country without any let or hindrance : only, if these goods were brought into Calcutta, they were liable to a duty of $2\frac{1}{2}$ per cent. : and if exported later, on other than the Company's account, a further export duty of 4 per cent. The abolition of the inland duties and the *Sayer* had a salutary effect on the local industries, particularly those in which the Company interested themselves, and for which their commercial agents assisted the producers, such as the weavers, salt-manufacturers and others, with money-advances.² There was, however, a total change of policy in 1801, as will appear later on, when the inland duties were revived first in four places and, later on, in practically all important towns.³

10. In the mean time the question of levying an export and import duty on merchandise carried across the north-western boundary of the Company's territories of Bengal and Behar arose. A custom-house was accordingly

Inland duties
1788-90.
transit
abolished
Frontier customs
at Manjee—Govt.
custom.

¹ Really brought out by the Parliamentary Select Committee's Report of 1783.

² While this helped the producers in one way, in another way it placed these agents in a position to dictate the prices : and this led Macaulay to observe that the Company's agents bought cheap and sold dear thus making an unconscionable profit : Macaulay's Essay on Warren Hastings.

³ These inland imposts were not abolished till by Act IV of 1836.

established at Manjee near the confluence of the rivers, Ganges and Gogra, and a rate of $2\frac{1}{2}$ per cent., either way, was imposed as Government custom.

11. Reg. XLII of 1793 consolidated the rules then in force regarding customs. It declared first that merchants and other persons were at liberty to carry their goods from one place to another, within the Company's territories,¹ free of all duties and tolls whatever, except that goods brought from inland (called also "imported") into Calcutta, were to pay the special Calcutta duty. The rate of this duty was raised to 4 per cent.² the same as the general rate of import-duty for merchandise brought overseas. But while for goods brought by sea and then re-exported, the import duty was exempted (or if paid, refunded), there was no such exemption (or refund) of the duty on country goods exported from Calcutta. The only exception was with regard to Bengal spirits and raw silk. There was no provision for export-duty in this Regulation.

12. The plan was slightly modified in 1795. By Regulation XXXIX of that year, the import duty levied as "Calcutta custom" was abolished, and *in its place*, the "Government custom" at $2\frac{1}{2}$ per cent., which had been abolished in 1788, was re-established, both for import and export. Two years later, Regulation I of 1797, raised

¹ This did not affect the import or export of goods across the north-western frontier, for which a duty of $2\frac{1}{2}$ per cent. either way, was levied at Manjee. This was continued.

² The calculation was on the *aurang* prices, i.e., prices at the place of production in the case of country products, and according to Calcutta price for the rest, with certain enhancements for goods under foreign colours. For goods brought in the Company's ship the calculation was to be on the investments of the captains and officers.

this rate by an addition of a new duty of one per cent.¹ Certain country products were, however, exempted² from these duties of $2\frac{1}{2}$ per cent. and 1 per cent., but these did not include cloth, muslin, yarn, shawls, etc., or silk-made articles. Goods imported by sea, declared for the purpose of re-exportation, were, however, allowed a drawback of the whole of the duties paid on importation.

13. The effect of Lord Cornwalli's plan of 1789, as developed up to 1797, was remarkable. The total revenue of Bengal, which stood at about 4 million pound in 1785, rose to over 7 million pound in 1801 : and, as the land revenue, the only other main source of revenue, was fixed (at about 2.68 million pound) by the Permanent Settlement, a good portion of this increase must have been on account of increased products and increased trade. But the policy was changed in 1801. In this year, the inland duty was re-established, and then gradually extended practically to all important towns in the Province. Custom-houses with outposts were established at all these places for the imposition and collection of the levy. All articles liable to the duty had first to be brought to the official godown, where the amount payable as duty could be determined after a valuation of the articles ; and when this amount was paid a *rowana* or pass would be given with which the owner would then be free to carry the goods. This was the procedure both when such article was " imported " into the town or its jurisdiction, or was " exported "

¹ The object of this duty, as stated in the Preamble, was to defray the expenses of an armed force for the protection of commerce which was suffering by the enemy's privateers cruising on the Balasore routes and off the entrance of the river Hooghly. It was perpetuated, however, by Regulation XI of 1800, the consolidated rate being thus $3\frac{1}{2}$ per cent.

² These were grains of all sorts : opium purchased at the Company's sales : indigo : raw silk and carriages exported on the Company's ships to the port of London : palanquins, *mechanna* and chair : copper and brass utensils.

from such place. From its very nature the impost was harassing and a definite impediment to the growth of industries and the circulation of local products. The avowed object was "improvement of public resources" (Regulation X of 1801), but this object, so far as receipts from customs, was not achieved. During the next ten years, in spite of the introduction of numerous other sources and the large increase in Opium-revenue, the total revenue of Bengal showed only an inconsiderable rise of less than 30 per cent.

14. This new policy was embodied in Regulation V of 1801 which revived the Calcutta custom (or Calcutta Town duty), *in addition to* the Government custom already re-established.

Calcutta custom
revived :

The rate was 4 per cent. (except for piece-goods of all descriptions for which the rate was 2 per cent.), and was levied on imports into Calcutta from the interior of the country as well as on imports by sea. Regulation XI of the same year next extended the Government custom at Calcutta to "goods exported from Calcutta into the interior of the country." The rate was the augmented rate of $3\frac{1}{2}$ per cent.

But the worst innovation,—worst from the point of view of the country's industries and internal trade,—was the extension of this duty to several other towns as well,—

—and extended
to several other
cities, 1801. Hooghly, Murshidabad, Dacca, Chittagong and Patna (Regulations X and XI of 1801, both passed on the same day).

This duty was payable on most of the country products when brought into these cities, whether for sale or consumption, as well as when they were "exported" (*i.e.*, taken out) from these cities into the interior. Goods, imported into Calcutta from the interior and having paid the Government custom of $3\frac{1}{2}$ per cent. when brought into Calcutta, were exempted from the export duty, when

exported by sea; and similarly goods imported into Calcutta by sea were exempted from any further duty when they were exported into the interior of the country: but there was no similar provision for country goods when "exported" from these places into the interior of the country for distribution. The same policy was followed when the Ceded and Conquered Provinces were annexed, and Regulation VI of 1805, established similar Government custom¹ in a number of cities in those territories.

—further extended to more cities, 1810.

In 1810 (Regulation X), this custom-duty was extended to further other towns in Bengal, *viz.*, Midnapore, Burdwan, Krishnagar, Jessore, Natore, Dinajpore, Comilla, Islamabad, Nusserrabad and Rangpur.

The inland custom or "Town duty" continued to be levied throughout the Regulation period, and was not abolished till Act XIV of 1836.² The custom-duty, thus imposed, was, however, not a recurring one. Once it was paid at any one of these places, and a *rowana* or pass obtained, the goods could be carried to any other of these cities or places without any further duty. Goods of the commercial residents of the Company or of their agents, or covered by the Company's investments, were, however, entitled to free *rowana* without payment of any duty, commission or fee.

15. The position in 1802 is summarised in Regulation V of that year (see Synopsis). Goods for export by sea, from any of the interior cities where a custom-duty was established, had to pay first the custom-duty of that city ($3\frac{1}{2}$ p.c.),

The general position in 1802.

¹ This was stated as established in the place of the previous duties on goods and other articles sold in the *bazars* and *ganjes*, which as such were oppressive and extortionate.

² Lord William Bentinck took up the matter seriously and employed Sir Charles Trevelyan to make an enquiry. His famous report exposed the grave evils of the system. The publication of this report stirred up a strong opinion

then the Calcutta Town duty (4 per cent., or for piece-goods, 2 per cent.), and the export duty ($3\frac{1}{2}$ p.c.), total 11 per cent. For goods imported by sea into Calcutta and taken into the interior, the only duty was the Government import custom of $3\frac{1}{2}$ per cent.; but for the country goods from the interior the net charge was the same (*viz.* $3\frac{1}{2}$ p.c.), *only when* they were in the trade of the Company's Commercial Residents or Agents or through them, and not otherwise.

16. Although it was not the intention that once Govt. custom had been paid at one place and a *rowana* obtained, the goods would be liable to further Government custom for their transport throughout the interior (except Calcutta), multiplied duties were probably levied in practice. Regulation IX of 1810, thus, had to make provision clarifying the position. It also simplified the application of the rules by laying down a Table of Rates for various articles chargeable to the duty. The rates were modified from time to time, and in 1817 (Reg. XXI) there was a consolidated revised tariff in three Tables.

17. The effect of this plan of inland duty was disastrous on the industries of the country, particularly on the industries of cotton and silk goods. There was a feeble attempt in 1823 to give some relief, when, by Regulation V of that year, the inland (or transit) duty charged on piece-goods, which then amounted to no less than $7\frac{1}{2}$ per cent., was reduced to $2\frac{1}{2}$ per cent. But, as observed by Dr. P. N. Banerjea, the cotton industry had by that time been almost completely destroyed. It thrived at the beginning when the weavers were directly encouraged by the Company's

Clarification of the rules in 1810 :

—their effect on the country's industries.

in England, and eventually the system was abolished in Bengal by Lord Auckland in 1836. Inland duties in all other parts of India were not, however, abolished till 1844.

agents : but when, with their altered position after 1813, they gradually withdrew, the industry collapsed before the competition of mill-manufactured products from abroad.

18. In the mean time another source of revenue from inland transport was gradually developed. By Regulation VII of 1801, a duty (one anna per ton) on country vessels called *dhonies*, carrying goods in the river Hooghly, was imposed. In 1806 (Reg. XVIII), a toll was levied on all boats passing through the Eastern canal (The Tolly's Nullah), and certain other *khals* near Calcutta, probably to meet the costs of their maintenance. Similar toll was next levied in 1810 (Reg. VII) on the canal which had then been cut from Baithakkhana (Calcutta) to the Salt Water Lake. In 1813 (Reg. IV), tolls were imposed on boats plying in the rivers Ichamati, Mathabhanga and Churni, the object stated being to defray the expenses incurred in certain measures for the improvement of these rivers. The rates were revised in 1824 (Reg. VIII) when the entire course of the Bhagirathi was added.¹

19. Foreign countries of Europe were permitted to trade at the ports of Bengal : but a higher rate of duty was charged. According to Reg. XLII of 1793, the duty on goods imported from such countries was about 60 per cent. more than the usual rate of 4 per cent. Similarly for China goods, the duty was about 30 per cent. higher.² The same proportions of increase were maintained in Regulation XXXIX of 1795. There was, however, no differentiation in the export rate of 2½ per cent. in this Regulation : but the advantages, which the Company's

¹ The revenue from these tolls as well as from the tolls on ferries, was allotted later, in 1854, for construction and maintenance of roads, and constituted what was then called the District Road Fund.

² The duty on goods from the Coromondal coast was about 15 per cent. high.



goods had in their transit from the interior, were, of course, not available to the trade of these foreign countries. This made a great difference when, in 1801, Government customs were introduced in certain cities in the interior which were the principal marts for country goods.

Several Regulations were passed next, with a view to giving further encouragement to British products. Reg. XI of 1801 exempted goods imported at Calcutta from any duty on their distribution in the interior, when such goods were "articles of British growth, produce or manufacture," and the same intention was repeated in Regulation VII of 1802, and made more clear.

20. Regulation IX of 1810 enhanced the rates of import duty: and when the goods were from countries of Europe, in ships under foreign colours, the proportion of increased rate was the same as before, *viz.*, about 60 per cent. So also for goods from China. The duties on the cargoes of American vessels importing from places to the westward of the Cape of Good Hope, excepting "such part thereof as was produce of America," were levied at the same rate as the duties on the cargoes of British vessels importing from Europe. As for the part of the cargoes as was of American produce, the duty was levied on the account sales of the goods attested: otherwise, higher rates were charged. Drawbacks on certain articles—such as, cotton, silk, indigo (as laid down in the Regulation),—were allowed only when they were exported to London.

21. In 1797, powers, with certain limitations, were conferred by 37 Geo. III, Cap. 117, on the Company to make Regulations for the trade of foreign nations. This statute gave right of free entry of foreign ships, when they belonged to nations in amity with His Majesty and had settlements of their

Preferential tariff
for British products
—1801.

Foreign trade :
Regulation in 1810.

—in 1811.

own in the East Indies. Whilst the previous increased duties for imports by foreign countries were maintained, Regulation III of 1811 laid down the drawback rates for exports at double those allowed to goods shipped on British bottoms. The foreign ships were also forbidden to carry or unload goods taken from British territories to or at any port other than a port or place in their own countries.

Later, when with the Charter of 1813, trade was thrown open to all English traders, an Act was passed by the Parliament (54 Geo. III, Cap. 105) which validated the levying of "all duties of customs and other taxes heretofore made or imposed" by the Company's Government "in respect of all goods, wares, merchandise, etc.," and, incidentally, also gave it authority to repeal, alter or vary the same in future.¹

22. Regulation IV of 1815 marks a stage of further advance of the same policy. A large number of articles of British product were exempted altogether from any duty, and for the rest the rate was half, viz., 2½ per cent. The rate for all articles, the produce of foreign Europe, was 5 per cent. There was also similar differentiation as regards drawbacks, when country goods were exported. As for America, according to the convention of commerce signed at London on 3rd July, 1815, no higher duty could be charged on goods in American vessels than those for the "most favoured European nations." Regulation XXI of 1817, maintained the general principles of Regulation IV of 1815, but elaborated the list of British products

¹ There was a series of Parliamentary enactments during this period (1814 to 1833) relating to trade and shipping (see Appendix to Chapter XIII), but these did not affect the powers of the Company's Government except to the extent specified therein with regard to foreign countries.



which were to be exempt from duty, and increased the proportion for goods on vessels other than British, to double. There was no difference in the export rate, but the previous distinction in respect of drawback was maintained.

The next comprehensive Regulation was Regulation XV of 1825. It repeated the distinction between British bottoms and foreign bottoms, and also between British products and products of other places. Varying import rates¹ were laid down for different kinds of articles, and when these articles were brought from countries other than Great Britain, the same proportion, *viz.*, double, was maintained. Similar differentiation was maintained for export duty where this was chargeable, and for drawbacks where Transit or Town duties had already been paid.

23. The adjustment of drawback for inland duty when the same articles were again exported, was complicated. But there were other and more serious evils in this levy. In 1825, Mr. Holt Machenzie submitted a memorandum to Government, in which he explained how at every station through which goods were carried, there was necessarily an official scrutiny and consequent detention, and pointed out how this not only caused great vexation, but had the effect of imposing on the trade a very heavy tax in the shape of delay and illicit exactions. But it was not till the time of Lord William Bentinck that the matter was seriously taken up. He deputed Sir Charles Trevelyan to make a thorough investigation, and, on the information thus gathered, the inland duties were eventually abolished in Bengal in 1836 (Act XIV of 1836). They were abolished in other Provinces later : see footnote under paragraph 14 *ante*.

¹ The rates were considerably increased : while a larger number of articles of British products were specified as duty free when brought on British bottoms.

Holt Mackenzie
and Sir Charles
Trevelyan on inland
duties: abolished in
1836.

24. The general effect of the policy, commenced in 1801 and then gradually developed in the subsequent Regulations, was far from favourable to the development of local industries. The first reason was the obnoxious inland transit duty which was a serious obstacle to transport and proper marketing even within the Province : and the second reason was the more extensive importation of British products which, besides the preferences given, had the advantage of better finish and cheapness. The period synchronised with the period of industrial revolution in England, and when the war with Napoleon was over, mills and factories began to grow up in Britain with tremendous rapidity. There was no attempt to develop the indigenous industries of Bengal, such as weaving, sugar-making or salt-manufacture : and all these very soon succumbed to the competition, aided so materially as it was by preferential tariff both here and in England. It is not, however, that people in England and even the authorities in India did not feel the possible disastrous effect it would have in the long run on the economics of the people in the British possessions in India. The attempt made in the Charter granted to the Company in 1813, for the separation of political and commercial functions of the Company, did not go far enough. The state of semi-anarchy which commenced with the decline of the Mughal empire from about the thirties of the 18th century, bringing in its wake mal-administration and disorder, culminated in severe famines and pestilence which carried away a vast proportion of the population, and reduced extensive tracts of country into waste and jungles. The vigorous efforts made to restore order and establish a stable and strong Government, coupled with the encouragements given to Bengal's industries (such as weaving and salt-manufacture) in the first half of the Company's regime,

Some general
observations on the
Company's policy
and its effects.

led rapidly to improvement of economic conditions and increase of population. When these encouragements ceased, there were still extensive large areas of waste and jungle upon which the people could fall, and agriculture began to thrive. It was then thought that India, in particular Bengal, could very well be only supplier of raw products, while finished goods would be obtained from the mills and factories abroad. It was thus that pressure on land began to grow, till it became dangerously intensive, and agriculture alone could no longer meet the needs of the people. Simultaneously, wider contact with the Western countries and spread of English education raised ideas of better standards of living amongst the people. Signs of discontent thus began to show, and it was not too early that the new Charter of 1833 divested the Company entirely of their trading functions, and made them definitely trustees for the good government and welfare of the people in the British territories in India.

APPENDIX TO CHAPTER VI

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO CUSTOMS AND INLAND DUTIES

Note :—Up to 1788 there were three classes of levies on merchandise, *viz.*,—(1) the Calcutta Custom at the city of Calcutta, claimed by the Company on their ancient factorial rights ; (2) the Government (*i.e.*, the previous Mughal) custom levied for goods imported into certain cities in the interior ; and (3) the *Sayer*, comprising charges for transport of goods by road, river, ferries, bridges and on shops, *bazars* and *gunjes*. The second was abolished in 1788, and the third was abolished in 1790. In the

mean time a custom-house was established at Manjee at the conflux of the rivers Ganges and Jamuna for the levy of Government customs on goods imported or exported across the north-western boundry of the Company's territories.

Lord Cornwallis

Regulation I of 1793—The Proclamation of the Permanent Settlement in this Regulation declared that while levy of all *Sayer* by the zemindars had been abolished by the orders of 28th July, 1790, Government reserved to itself the right of imposing any such *Sayer* or other internal duty and to collect the same direct through its own officers.

Regulation VIII of 1793—recited the rules of the assessment of the Decennial Settlement of 1789-90 (permanent in 1793), which, among other matters, laid down that the assessments were to be exclusive and independent of all duties, taxes and other collections known under the general denomination of *Sayer*, excepting the collections in *gunjes*, *hâts* and bazars situated within the limits of the town of Calcutta and excepting also the collections confirmed to the proprietors and holders of *gunjes*, *bazars* and *hâts* by the resolution of the Governor-General in Council on the 11th June, 1790.

Regulation XXIV of 1793—Collection of *Sayer* by zemindars having been abolished, payments of pensions met from such *Sayer* were also abolished.

(Repealed by Regs. XXII of 1806, XI of 1813 and Act XXIII of 1871.)

Regulation XXVII of 1793—explained in the Preamble that the levy and collection of all internal duties had been from time immemorial the exclusive privilege of Government not exercisable by any subject without

its express sanction : and that this sanction had been, during the Mughal period, too generally allowed to the zemindars. In order to improve trade, which was injured if not destroyed by the multiplicity of these petty taxes, and to provide a means of augmenting the public revenue (should occasion arise for it) without increasing the land tax, it was resolved to resume and abolish the *Sayer*, and the terms of this resolution were embodied in this Regulation.

(Partially repealed by Reg. VI of 1811 as regards compensation, and by Act X of 1840 as regards pilgrims at Gaya, and entirely repealed by Act XXIX of 1871 save as provided therein.)

Regulation XXXI of 1793—dealt with Commercial Residents and Agents and others employed or concerned in the provision of the Company's investments. Their main duty was to "supply or ensure the Company's demand for goods, as far as the ability of the *arung* (places of production) go," and for this purpose they were to engage with the weavers, silk manufacturers and producers of other articles either by advancing them with money (Company's investment) or otherwise in writing, stipulating for supply by the latter of the articles produced by them and the prices. When so engaged, the producers were bound to sell all their goods to the Residents or Agents, and were penalised if they sold to anybody else. On the other hand the producers were given certain protection against acts by the zemindars, such as summoning them to *katchery* or distraining of their own motion : their remedy was to sue in the Court, and in such case the summonses were to be sent to the Resident or Agent for service. So also for criminal complaints.

The Residents were forbidden from using compulsion for engagement, or for price except "which they (the producers) may choose and deal with them," and in case

of infringement the Residents were liable to be sued in the Court.

Trading on private account by the Residents was not forbidden; but when they did so they were required to keep it distinct from the trade with the Company's investment.

(Expanded by Regs. IX of 1801 (Salt) and IV of 1805, and repealed by Regs. XIII of 1816, XX of 1817, IX of 1829 and Act VIII of 1868.)

Regulation XLII of 1793—consolidated the rules regarding customs duties then enforced.

Declared first that “merchants and other persons are at liberty to transport goods from one place to another within the limits of the Province of Bengal, Behar and Orissa, free of all duties and tolls whatsoever.” From this, however, were exempted—“goods imported into the town of Calcutta” whether by land or sea, which were to be subject to what was called the “Calcutta Customs.” Goods passing either way across the north-western frontier of the Company's territory, were also liable to import and export duty at the Manjee custom-house near the conflux of the rivers Ganges and Jamuna. The net result was that the only levies on trade were—(1) the import duty at Calcutta, called the “Calcutta Customs,” and (2) the import and export duty at Manjee, under “Government Customs.”

The rates of the Calcutta customs on goods brought in from the interior of the country were—(1) 4 per cent. on the *arung* price (*i.e.*, at the place of production) of all gruff goods, and (2) 2 per cent. on piece-goods, cotton thread and yarn without any deduction. All necessaries of life, except grain, were included in the levy. A *Kayalee dastur* (weighman's commission) was levied on *til* and mustard seed. An additional duty of 4 annas per gallon was imposed on “common paria or inferior country

arrack " : and for *ganja* the rate was twenty rupees per cent. on the selling price at Calcutta. Betel-nut and tobacco were subject to usual levy of 4 per cent. A remission in the nature of drawback, when exported by sea, was allowed only in the case of Bengal spirits and raw silk.

For goods imported by sea, the rate was the same, viz., 4 per cent., but calculated generally on the Calcutta price : but an enhanced rate was imposed on goods imported from Europe under foreign colours, the valuation being increased by 60 per cent. on the " prime cost of the articles." Goods from China had to pay an enhanced rate of 30 per cent. and those from Coromandel coast of 15 per cent.

In the case of goods brought in the Company's ships the valuation was to be " on the investments of the captains and officers * * on the amount of their invoices without adding the usual percentage." Copper imported from Madras under contracts with the Company was duty-free.

For liquors, there were separate kinds of rates. Wine, brandy, etc., had to pay Rs. 12 per pipe : Batavia Arak—at Rs. 55-1-3 per leaguer, and other Arak at Rs. 6 : Beer, Porter, etc.—at Rs. 2-8-0 per hogshead. For Cherry, brandy, etc., when brought in bottles,—the rate was Re. 1 per dozen, and for rum, beer, etc.,—annas eight.

For goods imported by sea expressly for the purpose of re-exportation, and such goods when re-exported, the import duty was remitted or refunded. Not so for goods imported from the interior of the country when exported by sea.

The Regulation also laid down detailed rules for the custom offices and for control of warehouses.

(The whole Regulation was repealed by Reg. IX of 1810 : previous modifications in part by Regs. XXXIX and XL of 1795.)

Sir John Shore

Regulation III of 1795—modified the arrangements with the Raja of Benares in December, 1787 (enforced from 1st April, 1788), arrangements with the Nawab Vizier in 1788, and with the Raja of Nepal in April, 1792, regarding commerce through the Province of Benares.

There were to be four superior customs stations, *viz.*, Benares, Ghazeepore, Mirzapore and Juanpur. Benares *rowanas* or passes were to hold good for Bengal, Behar and Orissa for 6 months, and *vice versa*.

The rate of the levy was reduced to $2\frac{1}{2}$ per cent. (on either side), except for *Salgram* stones, quarry stones from Chunar, cattle, horses, elephants. Transportation of warlike stores as cannon, guns, etc., "to or for the use of country powers or private persons, without a pass from Government," was forbidden.

(Repealed by Reg. IX of 1810.)

Regulation IV of 1795—extended the prohibition to collect *Sayer* and internal duties by the zemindars, to the Province of Benares.

(Repealed by Act VIII of 1868 save as provided therein.)

Regulation XXXIX of 1795—(1) abolished the Calcutta customs or Town duty under Reg. XLII of 1795; (2) revived the Government custom at the port of Calcutta, which was abolished in 1788; (3) prescribed the Courts where aggrieved party might seek relief against acts of the Collector of Customs, the Board of Trade or the Governor-General in Council.

The Preamble explained first the system followed up to 1788, according to which the duties levied were of two descriptions,—*first*, the "Calcutta Customs" (also called Calcutta Town duties) collected by the Company in virtue of their ancient factorial rights; and *second*,

the "Government Customs" on the authority of the Company being the Ruling Power, on all goods imported into or exported from any part of the Province. The latter required a *rowana* or pass, on payment of certain duties, and this operated thus as an internal impost also, on articles produced or manufactured in the country which were not exported by sea. The "Government Customs" were abolished by an order dated 3rd November, 1787, and later in 1788 it was explained that the abolition was not meant to extend to "Calcutta Customs or Calcutta Town Duties." This Regulation reversed this plan: the "Calcutta customs or Town duty" was abolished, and in its place the Government customs, on imports of foreign goods and exports of country goods at Calcutta, was revived, with the object, as stated in the Preamble, of improving the revenues from this source.

The rate of the Government customs thus levied at Calcutta on imports of foreign goods, was $2\frac{1}{2}$ per cent., with the following exceptions:—

(1) Goods imported from Europe under foreign colours, were to pay on an addition of 60 per cent. to the prime cost;

(2) goods, the produce or manufacture of the Coromandel Coast, on an addition of 15 per cent. to invoice price;

(3) China goods,—on an addition of 30 per cent. to the invoice price;

(4) unauthenticated cargoes on Macao ships,—on an addition of 40 per cent. to the prime cost;

(5) Batavia *Arrack* at Rs. 55 per leaguer: and *Arrack* from Bencolen was duty-free;

(6) goods on Company's vessels were to pay on the investments of the captains and officers according to the amount in their invoices;

(7) copper imported from Madras under Company's contracts and advances,—was duty-free.

The export duty on country goods, was also at $2\frac{1}{2}$ per cent. calculated on the "*arung* or prime cost." Certain articles were, however, exempted, *viz.*,—grains of all sorts, opium purchased at the Company's sales; indigo, raw silk and carriages exported in the Company's ships to the port of London; palanquins, *machanua* and chair; brass and copper utensils; spirits distilled after the European manner.

Goods imported (by sea) declared for re-exportation, were allowed a drawback of the whole of the import duty. The same concession was extended to Manilla indigo only when re-exported on the Company's ships.

The Government customs at Manjee was continued. (Modification by Regs. LVII of 1795, XI of 1800 and XIX of 1806: and wholly repealed by Regs. IX and XI of 1810.)

Regulation LVII of 1795—Owing to difficulties in ascertaining the *arung* price of goods brought to Calcutta from the interior, levy was directed to be calculated on the Calcutta price *less* ten per cent. The *kayalee dastur* or charge for weighment of seeds was also abolished.

(Repealed by Reg. IX of 1810.)

Regulation I of 1797—imposed an additional levy of one per cent. except for bullion or money, the object, as stated in the Preamble, being "to equip an armed force for the protection of" the commerce of the port of Calcutta which was suffering "by the enemy's privateers cruising in Balasore routes and off the entrance of the river."

(Modified by Reg. XI of 1800 and repealed by Reg. XIII of 1816.)

Regulation X of 1797—*Rowanas* or passes (as required for goods taken out from Calcutta or brought in across the frontier custom-house at Manjee) for goods of value not exceeding Rs. 10 exempted from stamp-duty; other passes required stamped paper.

(Repealed by Reg. I of 1814.)

Lord Wellesley

Regulation XI of 1800—(1) consolidated the additional duty of one per cent. under Reg. I of 1799 with the usual rate of $2\frac{1}{2}$ per cent. raising the latter to $3\frac{1}{2}$ per cent. ; (2) imports of goods into and exports from the Company's Provinces by way of foreign settlements were subjected to the usual duty (resolution of 16th July, 1798) ; (3) for the encouragement of ship-building, imported timber was exempted from duty ; so also horses of superior breed.

The Collector's commission of 5 per cent. on the duty levied was reduced to $3\frac{1}{2}$ per cent. Sundry other miscellaneous rules were laid down for determining the procedure and valuation for the purposes of the levy. In this connection exchange rates of the rupee in relation to coins of Great Britain and foreign countries were also laid down :—

Great Britain	—Pound sterling	= 10	<i>sicca</i> rupees
Denmark	—Rix dollar	= 1-10	„ „
France	—Livse Tour-		
	nois	= 24	for 10 <i>sicca</i> rupees
Spain	—Dollar	= $2\frac{1}{4}$	<i>sicca</i> rupees
Portugal and Madeira	—Millrue	= $2\frac{3}{4}$	„ „
China	—Tale	= $3\frac{3}{4}$	„ „
Madras	—Star Pagoda	= $3\frac{3}{4}$	„ „

American coins to be converted to British pound sterling and then to rupees.

Cargoes on American vessels round the Cape of Good Hope were charged at the same rate and manner as cargoes on British vessels.

(Partly repealed by Regs. V of 1802, VII and XIX of 1806 : and wholly by Regulation IX of 1810.)

Regulation V of 1801—The Calcutta Customs or Calcutta Town duty, which was abolished in 1795 (section 2 of Reg. XXXIX of that year), was re-established, while the Government custom revived in that year was also continued. It was an import duty only and the rate generally was 4 per cent. Goods brought into Calcutta from the interior of the country which were liable to this duty were specified. These included raw products as tobacco, *pan*, betel-nut, raw silk, but not grains. Manufactured articles included—*ghee* oils, embroidered goods (*keenkhaps*, etc.), gold and silver lace, *chunam*, hides, soap and tallow, brass and copper utensils, stone plates, sugar, indigo, saltpetre, rose-water, wax and wax candles, *shawls*, carpets, paper, etc.,—the rate being the same, *viz.*, 4 per cent. The rate for piece-goods of whatever description, cotton and cotton yarn, was 2 per cent. *Ganja* and spirituous liquor had special rates. Raw silk and indigo intended to be exported to England on Company's or other licensed ships were exempted from this duty.

For imports by sea the rate was also 4 per cent. and the other details were the same as in Reg. XLII of 1793 : except that timber, horses, bullion and coin, precious stones and pearls were exempted.

The Collector was authorised to levy 5 per cent. of the duty as his commission.

(Partly repealed by Reg. V of 1802 and wholly by Reg. X of 1810.)

Regulation VII of 1801—modified the duties on coasting vessels called *Dhonies* : established a duty of one anna per ton on vessels importing into or exporting from the river Hooghly. The object of the latter was stated to be defraying the expenses attendant on a magazine to be erected for the reception of the gunpowder of ships entering this river.

(Ceased to have effect in ports to which Act XXII was extended : repealed by Act XVI of 1874.)

Regulation X of 1801—referred to the Regulation of Lord Cornwallis by which while abolishing all internal duties, power was reserved for consideration what internal duties might be imposed later, for the “improvement of public resources” : and with a view to this object duties corresponding to the Calcutta Town duties (*vide* Reg. V), were re-established also on certain kinds of articles imported into the cities of Patna, Dacca, Murshidabad and Benares “in the room of the *gunje*-duties and other duties formerly levied in the said cities.”

Accordingly, custom-houses were established in the above four cities in charge of the Collectors who were to receive commissions at 5 per cent. on all duties collected on goods imported in their towns : Specified the articles on which this duty was to be levied,—and these included tobacco, *pan*, betel-nut, furniture, *ghee*, pepper, seeds of every description, embroidery work, *chunam*, hides, utensils, silk, indigo, saltpetre, shawls, carpets, paper, gunnies, blankets, shoes, sandal wood, iron manufactures, etc. The rate of duty was 4 per cent.

Piece-goods, cotton and cotton yarn were also subjected to the “import duty,” but the rate was 2 per cent.

Goods imported into these cities from the dominions of the Nawab Vizier of Oudh, were exempted by virtue of the Treaty dated 1st September, 1788 : and in certain cases also goods from the territory of the Raja of Nepal.

Goods chargeable with the duty (except gruff goods) to be deposited first in the godown : detailed rules of procedure : control by the Board of Trade.

(Replaced by Regulation X of 1810.)

Regulation XI of 1801—extended the Government custom at Calcutta, to “goods exported from Calcutta into the interior of the country, and goods imported into Calcutta

from the interior of the country " : and also established similar duties at Hooghly, Murshidabad, Dacca, Chittagong and Patna, while the custom-house at Manjee was withdrawn. The rate of the " import "-duty (*i.e.*, when goods from the interior of the country were brought into these cities for sale or consumption) was the previously augmented rate of $3\frac{1}{2}$ per cent., and so also when goods were " exported " (*i.e.*, taken out of these cities into the interior), the rate was $3\frac{1}{2}$ per cent.

Goods imported into Calcutta from the interior and having paid the Government customs of $3\frac{1}{2}$ per cent. when brought into Calcutta, were exempted from the Government export customs when the same was exported by sea but there was no similar provision for such goods when " exported " into the interior for distribution. Same rules applied for the port of Chittagong.

Goods imported into Bengal *by sea* and having paid the Government import customs, were exempted from any further duty under this Regulation, when " exported " into the interior of the country.

The country goods on which the import and export duties above, were leviable, were specified : they were the same as in Reg. V, but with additions like household furniture, gunnies, caps, *hookka-snakes*, leather, iron goods, etc. Provision was made for *rowanas* or passes at the different custom-houses (there were outstations or *chowkies* at places to determine the jurisdiction of each of these towns), but commercial residents or agents employed to provide for the Company's investment, were entitled to get passes free of any duty, that is to say their goods were exempted from any " customs, commission or fee." *Rowanas*, granted at any one custom-house, exempted the goods covered by them in their passage

to any place within the Company's territories, from the payment of any further duty under this Regulation.

Certain articles were specifically mentioned as exempt from the duties under this Regulation, and these included—paddy, grains, salt, *ghee*, tiles, pottery, bullion, jewels, horses, opium purchased at the Company's sales : and also generally “all articles of British growth, produce or manufacture, imported into Bengal by sea.”

Collectors authorised to levy a commission of 4 per cent. (in addition to the customs rates) on the amount of the customs, *viz.*, 9/10th for himself and 1/10th for his Deputy.

(Some provisions explained by Reg. I of 1802 : Repealed by Reg. IX of 1810 : for stamp-duty on *rowanas* by Reg. I of 1814.)

Regulation I of 1802—explained that articles of piece-goods of whatever description, cotton and cotton yarn were subject to the duties by Reg. X of 1800, and declared also *ghee* and charcoal as liable to the same duties.

(Repealed by Reg. IX of 1810.)

Regulation V of 1802—first summarised the various duties levied on goods coming into Calcutta by various routes for commerce :—

(1) Those from the territories ceded by the Vizier, and coming through Behar,—*first* a Government customs of 5 per cent. (excepting piece-goods for which the rate was $2\frac{1}{2}$ per cent.), *then* a Calcutta Town duty of 4 per cent. (excepting piece-goods for which the rate was 2 per cent.) and *lastly* an export duty of $3\frac{1}{2}$ per cent.;

(2) produce or manufacture of Benares,—*first* a Government duty of $2\frac{1}{2}$ per cent. at Benares, *then* a Government customs of $3\frac{1}{2}$ per cent. at Patna, and *lastly* the Calcutta Town duty of 4 per cent., excepting piece-goods for which the rate was 2 per cent.;

(3) produce or manufacture of Bengal, Behar and Orissa—*first* the Government customs of $3\frac{1}{2}$ per cent. (at

one of the custom-houses, Patna, Dacca, Murshidabad, Chittagong, Hooghly or Calcutta), *then* the Calcutta Town duty of 4 per cent. (or 2 per cent. for piece-goods); and *lastly* the export duty of $3\frac{1}{2}$ per cent., except when the goods were exported within nine months.

“With a view to encouraging the commerce of the British territories,”—the following modifications were introduced :—

(1) Goods from the territories ceded by the Vizier— $2\frac{1}{2}$ per cent. at Benares+2 per cent. at Patna+Calcutta Town duty of 4 per cent. (in case of piece-goods—2 per cent.). If exported by sea, a drawback of three-fourths of the Calcutta Town duty : and no further export duty. There were some minor special rules for indigo and silk-goods ;

(2) goods, the produce or manufacture of the Province of Benares— $3\frac{1}{2}$ per cent. at Benares : and at Calcutta, Town duty of 4 per cent. (for cotton or cotton yarn—2 per cent.). If brought for exportation, the latter duty was not to be paid, but an export duty of $2\frac{1}{2}$ per cent. If the Calcutta Town duty had been charged and the goods were later exported by sea, a drawback of three-fourths of the Town duty was allowed,—no further export duty, whatever the period of detention ;

(3) goods, the produce of Bengal, Behar or Orissa,— $3\frac{1}{2}$ per cent. at Calcutta custom-house (unless this Government customs had been paid at any of the other interior custom-houses), on the Calcutta price (and not *arung* price), and the same predicament as in (2) above ;

(4) goods, the produce of any Province other than the Provinces mentioned in (1), (2) and (3) above, were to pay the first duty of $3\frac{1}{2}$ per cent. (instead of $2\frac{1}{2}$) and then the same predicament as in (1).

This Regulation also laid down that all goods whatever, imported into Calcutta by sea, which were not declared to be exempt, were to pay the established

Government customs and the Calcutta Town duties.

The exception from Government customs at the several custom-houses,—was extended to indigo-seed, *pan* and mats.

The extra perquisite of the Collector was put at 5 per cent.—9/10ths being for him and 1/10th for his Deputy.

(Repealed by Reg. IX of 1810.)

Regulation VII of 1802—Generally all goods having once been “ imported ” into Calcutta, or Hooghly, or Chittagong by sea, were liable to the Government “ export ” custom when they were again taken out into the interior. For the benefit of the Europeans in the country, certain articles of necessity were exempted from this further “ export ” charge, *viz.*,—liquors, cheese, etc., grocery, confectionary, cutlery, hosiery, shoes, hats, coats, books, stationery, saddlery, millinery,—and besides these generally all Manchester goods.

(Repealed by Reg. IX of 1810.)

Regulation IV of 1805—referred to the practice in the Province of Benares of the Company’s commercial agents working through “ native *dalals* or *dustooreas*,” and laid down rules for stopping this practice and extending the Bengal practice of advancing directly to the producers. The reason stated was that otherwise “ the desired improvement ” of the fabrics and the requisite quality of goods and quantity, were affected. It also extended the provision in Bengal and Behar, that goods on the Company’s investment were not to be subjected to any “ customs, commission or fee.”

(Modified by Reg. IX of 1829 and repealed by Act VIII of 1868.)

Regulation VI of 1805—referred to the practice in the Ceded and Conquered Provinces, of the Government levying duties on goods and other articles sold in the *bazars* and

gunjes: characterised it as oppressive and extortionate : and accordingly abolished the same, and in its place established custom-houses and a levy of town duty, at the important cities, *viz.*,—Allahabad, Furruckabad, Bareilly and Agra : and Goruckpore, Moradabad, Cawnpur, Etawah, Coel, Meerut and Shaharunpore : and the principal town in the Zilla of Bundelkund.

The duty was for “ imports ” of goods into these cities, and the rate was 2 per cent. on piece-goods, cotton and cotton yarn, and 4 per cent. on other articles not specifically exempted. No drawback was allowed when such goods were exported from the city, except in the case of piece-goods, raw silk, cotton and indigo exported expressly for some other of the above cities or outside the Ceded and Conquered Provinces. The exemptions and other rules were similar to those in Bengal and Behar.

Collectors were authorised to levy 5 per cent. of the duty for their own perquisite.

(Repealed by Reg. X of 1810.)

Regulation XVIII of 1806—provided for levy of toll on all boats passing through the Eastern Canal (Tolly’s Nullah) of Calcutta (connecting the Hooghly river with Sundarbans) and canals called Banka Nulla, Kunjapore Khal, Gowal Khal and Narainpur Khal (round Calcutta). Rates generally—4 annas per oar or 4 annas per 100 maunds of bottom. In case of rice, paddy, etc., Re. 1 per 100 maunds bottom.

Also rates for ferries across the above canals : rates :—a foot-passenger—5 *gandas*, with load—1 *pun* of cowries ; a bullock—2 *puns* ; a palanquin with bearers—4 annas ; sheep and goats, etc., 1 *pun* of cowries each.

(Repealed by Act XXII of 1836—so far as regards Tolly’s Nullah, and the rest by Act V (B.C.) of 1864 and Act XII of 1873 save as therein provided.)

Lord Minto (First)

Regulation XI of 1807—The authority exercised by the Board of Trade under Regulation VI of 1805 in the Ceded and Conquered Provinces was transferred to the Board of Commissioners appointed under Regulation X of 1807.

(Repealed by Act VIII of 1868.)

Regulation VII of 1810—provided for levy of toll at certain rates, on the canal which had been cut from Baithakhana Road (Calcutta) to the Salt Water Lake for facilities of internal commerce. The rates were :—2 annas per oar, or per 100 maunds of bricks, earthenware, sand, earth, *soorkey* : 8 annas per 100 maunds of straw, firewood, etc. : and 12 annas per 100 maunds of grains or vegetables.

(Repealed by Act XXII of 1836.)

Regulation IX of 1810—consolidated and clarified previous Regulations relating to customs and Town duties. One object stated in the Preamble was to simplify the existing “ complex system of multiplied taxes ” which were harassing to all concerned. The number of interior cities where the Government customs would be levied was, however, the same as in Reg. V of 1802, but it was made clear that once the duty was paid on the importation of goods within the limits of a city and a *rowana* obtained, no further duty on the carriage of the same to any other city or place would be levied : and it was also made clear, that the only further duty payable was the export duty, when the goods were exported by sea from Calcutta, Chittagong or Balasore. One Table was laid down for rates of “ import ” duty, and this applied generally both for goods imported by sea, and goods brought into the limits of any of these cities from the interior of the country. It was also made clear that no transit duty would be levied unless expressly provided for,

Most important was the Table of Rates. The rates varied according to the nature of the article and its source. For instance, for cotton and wool the rate was 12 annas per maund : but generally the rates were *ad valorem* on Calcutta price, though in certain cases the valuation was fixed, *e.g.*, raw silk filature was to be valued at Rs. 7 per seer, Bengal silk at Rs. 6 per seer, *Tussah* at 5 annas per seer. On such valuation, the rate of the duty was put at $7\frac{1}{2}$ per cent., except in specified cases when the rate was higher as 10 per cent. (*e.g.*, shawls and woollens, wax and wax candles, pepper, saffron, timber, *chunam*, quicksilver, tin, copper and brass, lead, iron and steel, pigments, sulphur, alum, tea), or lower 5 per cent., or $2\frac{1}{2}$ per cent. on certain articles on importation by sea (*e.g.*, canvas, thread, cordage and marine stores, woollens).

Articles exempted from the "import" duty included—timber for shipbuilding, horses, bullion and coin, precious stones : and from the export duty (by sea)—grain of all sorts, precious stones, etc., opium purchased at the Company's sales, spirits distilled after the European manner, carriages and palanquins.

No customs, duties or fees were payable on goods carried by or through Commercial Residents or Agents and others employed to provide goods for the Company's investment, and these were entitled to have *rowana* free of such charge.

For goods imported by sea, the rates would be applied on the original invoices or bills, otherwise on the Calcutta price. In the case of goods on the Company's ships, the valuation was to be on the investments of the captains and the officers. The proportions of enhanced rates for goods from the Coromandel Coast and China, and for goods from Europe in ships under foreign colours, were maintained. The duties on the cargoes on American vessels importing from places to the westward of the Cape

of Good Hope, excepting such part thereof as was of produce of America, were to be levied at the same rate as the duties on the cargoes of British vessels, importing from Europe. As for the part of the cargoes as was of American produce, the duty was to be levied on the account sales of the goods duly attested.

The export rate of 5 per cent. for export by sea, was to be levied on the Calcutta market price, less 10 per cent. Provisions of stores for His Majesty's navy and His Majesty's squadrons, were exempted from the duty. Drawbacks at various proportions of the import duty paid, were allowed on exportation by sea, and this generally was about 5 per cent. where the import duty was $7\frac{1}{2}$ per cent. In certain cases, as cotton, silk, indigo, the drawback was allowed only when the export was to London, and in other cases, *e.g.*, shawls, woollens, indigo, sugar,—when to Europe or America generally.

Special rates were laid down for salt.

(Modified by Regulations XVII of 1810, III of 1811, XIX of 1812, VI of 1814, IV of 1815, XIII of 1816, XXI of 1817, IV of 1819, V of 1820, II of 1822, V of 1823, XV of 1825, IX of 1826, XV of 1829 and I of 1833 : and repealed by Acts XIV of 1836, XVI of 1837 and XIV of 1843.)

Regulation X of 1810—Passed on the same day as Reg. IX. The Preamble indicates that the Town duties levied at Calcutta, Patna, Dacca, Murshidabad and Benares and the principal towns in the Ceded and Conquered Provinces, under Regulations V & X of 1801 and VI of 1805, were exclusive of the Government customs also levied at these places. This Regulation (following the policy of simplicity enunciated in Regulation IX), abolished the Government customs, or rather consolidated the two, and laid down only one set of duties (called Town duties) to be levied only on certain specified articles when brought into

340 ANALYTICAL SURVEY OF BENGAL REGULATIONS

(i.e., "imported" to) these places, whether such articles were so brought for sale or store or for consumption within these cities. The rates were :—

2½ per cent.—on grains (paddy, rice, wheat and barley).

5 per cent.—on *dal* (pulses) of all sorts, oil, betelnut, oilseed, sugar, turmeric, charcoal and firewood. The last two only when brought into Calcutta.

10 per cent.—on *ghee* and tobacco.

For salt, other than salt purchased at the Company's sales at Calcutta, when imported into the Province of Benares or the Ceded and Conquered Provinces, the rates were Re. 1 per maund on Lahore salt, and 8 annas and 4 annas per maund on other varieties, such as Shambar, Salumba, etc., and Boraree.

Extended the application of this impost to a number of other towns, and the revised list now comprised :—

Agra	Benares	Calcutta
Furruckabad	Patna	Murshidabad
Allahabad	Purnea	Dacca
Bareilly	Bhagalpur	Midnapur
Monghyr	Mujaffarpur	Burdwan
Goruckpore	Chupra	Hooghly
Banda	Sylhet	Krishnagar
Cawnpore	Arrah	Jessore
Mynporee-Coel	Gaya	Natore
Muradabad		Dinajpur
Meerut		Commilla
Mirzapur		Islamabad
		Nusserabad
		Rangpur

This Regulation also permitted Collectors (subject to the orders of the Board of Revenue or the Board of Commissioners) to farm out the collection of the Town duty, and detailed rules were laid down. The term was

to be for 12 months “or longer at the discretion of the Boards.” There were to be local limits for the Town duty of each town, and the farmers were to make their collections “at certain fixed stations on the public roads or avenues, leading to the town or city.” The farmers were to pay according to the monthly instalments agreed to by them, any margin being their profit. The Collectors were also permitted to draw (for self) such commission on the amount collected as Government might fix.

These rules of farming did not apply to Calcutta, where the collection was in direct charge of the “Collector of the Government customs,” who for this purpose was to be styled also “Collector of the Calcutta Town duties.” The limits of Calcutta for this purpose were also specifically laid down :—

On the North—from Dum-Dum bridge to Baranagore, then across the Hooghly river to the Bally *Khal* :

On the West—the high road from Hooghly to Sangral, through Sulkea, Howrah and Sibpur, to Col. Kyd’s premises at Sibpur, then across the river to Mucwa Colah, then along the road to the new Garden Reach Road :

On the South—south-easterly to include the town or *hāt* of Ballia, to Tollygunge including the *gunje* :

On the East—from there to “Ballia Ghat” on the Saltwater Lake, and then as in a line to Dum-Dum bridge.

There were two *chowkies* or outposts—one at the mouth of the Bally *Khal* and the other at Kidderpur Ghat : and also *chowkies* at other entrances into the city.

(Modified by Regulations XVII of 1810, II of 1822, IX of 1826, and repealed by Acts I of 1833, I of 1834, XIV of 1836 and XVI of 1874.)

Regulation XVII of 1810—revised the rates of duty on importation of salt in the Ceded and Conquered Provinces.

(Repealed by Regulations XX of 1817 and XVI of 1829 and Acts XIV of 1836 and XIV of 1843.)

Regulation III of 1811—related to the trade of foreign nations in the Company's possessions in India, passed under the authority given by 37 Geo. III, Cap. 117.

“Foreign European ships belonging to any nation having a settlement of its own in the East Indies, and being in amity with His Majesty”—might freely enter the British seaports, subject to the duties laid down in the Regulation. The duties thus prescribed, whether on importation by sea or exportation, were double the rates laid down for British bottoms, and the Regulation contained Tables to show the differential rates. Goods imported for re-exportation were allowed a drawback of two-thirds of the import duty, if exported on British bottoms, and one-third, if exported on foreign bottoms.

The vessels of such foreign European powers and also of the United States of America, were forbidden to carry any of the articles exported by them from the British territories, to any port or place except to some part or place in their own countries respectively: and unloading of such goods to any other place was forbidden, on forfeiture of bond to be executed therefor.

(Modified by Regulations VI of 1812, *re* form of bond, XX of 1816, *re* American trade, XV of 1825—*re* rate and drawback: also by Regulation VII of 1818 and Act VIII of 1868.)

Regulation I of 1812—provided for—

(1) a duty of Rs. 200 and 400 on horses other than those from Europe:

(2) a duty of 10 per cent. on tobacco imported by sea into Chittagong:

(3) prohibited exportation of woollens from Bengal to China:

(4) piece-goods from the Ceded and Conquered Provinces subject to $2\frac{1}{2}$ per cent. duty if exported on British bottoms, and $7\frac{1}{2}$ per cent. if on foreign bottoms.

(Partially repealed and modified by Regs. XVII of 1812, XIV of 1813, IV of 1815, V of 1820, and wholly by Act VIII of 1868 save as therein provided.)

Regulation XVII of 1812—Import rates on horses modified according to size : otherwise horses imported from Europe and also from Pegu, exempted from duty. The impost extended to horses imported through Cuttack.

(Repealed by Regulation XIV of 1813.)

Regulation XIX of 1812—Government customs and Town duties established at Bareilly and Gazipur. Control of the custom-house at Meerut transferred to the Collector of Customs at Agra, and those at Furruckabad and Allahabad to the Collector of Customs at Cawnpore : and so Mirzapur to Benares.

(Repealed by Act VIII of 1863.)

Lord Hastings

Regulation IV of 1813—To defray the expenses of certain measures for the improvement of navigation in the rivers Ichamaty, Mathabhanga and Churni, tolls were imposed on boats plying in these rivers, at 2 annas per oar, and in case of bricks, earthenware, sand, earth and *soorkey*—8 annas per 100 maunds, and for grain and vegetables 12 annas per 100 maunds. Boats laden with other kinds of goods—one rupee per 100 maunds. Collector of Nadia put in charge.

(Repealed by Reg. VIII of 1824.)

Regulation XII of 1813—Principal custom-house of the Province of Benares, established at Mirzapur.

For export of coin or bullion from Calcutta, Chittagong or Balasore, either to America or Europe, a duty of 3 per cent., if exported on British vessels, and 6 per cent. if on foreign bottoms, was imposed. No duty for export of these to any other place.

(Repealed by Reg. XV of 1825 and Act VIII of 1868.)

Regulation XIV of 1813—abolished the duty on horses imported by sea through the district of Cuttack.

(Repealed by Act VIII of 1868.)

Regulation VI of 1814—laid down certain rules for enforcing the duty of $2\frac{1}{2}$ per cent. on indigo of the Ceded and Conquered Provinces, imposed by Regulation IX of 1810.

The rate in Regulation X of 1810 [Sec. 97 (2)] for levy of an export duty on goods on the river Hooghly for importation into the foreign settlements, was suspended, and made subject only to the same rate as exports from Calcutta on British bottoms.

A custom-house was established at Shahrumpur in the Conquered Provinces.

(Repealed by Reg. IV of 1815 and Act VI of 1863.)

Regulation IV of 1815—marks a stage of particularly preferential tariff for British goods.

The following articles imported from the manufacture of Great Britain and Ireland, on British ships or on Indian-built ships trading under section 30 of 53 George III, Cap. 155 and other Acts, were exempted from any duty :—Woollens, including cloths of all sorts, blankets, hose, guernsey shirts, caps and generally all articles manufactured from wool or worsted thread or yarn.

Copper, tin, iron, steel, lead and all other metals in an unmanufactured state, being the produce of the United Kingdom, were exempted from duty : so also canvas, cordage and other marine stores manufactured in the United Kingdom.

On *all other articles*, the produce or manufacture of the United Kingdom, the duty was to be only $2\frac{1}{2}$ per cent.

For *all articles*, the produce of foreign Europe (except wines and spirits), the duty was to be 5 per cent.

It was further laid down that when these import rates had been paid on goods “no further duty shall be levied

upon their transit from port to port within the same (British) territories.”

For goods exported by sea from the country, a full drawback was permitted only in the case of cotton, wool, hemp and *sun*n (grass): on all other articles the drawback was limited to $2\frac{1}{2}$ per cent.

A full drawback was allowed also on indigo exported on British ships or Indian-built ships trading with the United Kingdom.

(Repealed by Regs. XXI of 1817, XV of 1825 and Act VIII of 1868.)

Regulation X of 1816—Exportation of saltpetre by sea or importation from the interior into the foreign settlements strictly forbidden. The object stated in the Preamble was “protection of the commercial intercourse between India and Great Britain and other general interests of the British nation.”

(Repealed by Reg. XV of 1825.)

Regulation XII of 1816—established a custom-house at Cox’s Bazar for the collection of Government customs.

(Repealed by Act VIII of 1868.)

Regulation XX of 1816—Trade with the United States of America regulated by the 3rd article of the Convention of Commerce with Great Britain signed at London on 3rd July, 1815: “no higher duty or charge than shall be payable on vessels of the most favoured European nations.” Prohibition to coasting trade or to carriage of goods from India to any place other than the United States, in particular the Island of St. Helena so long as it was the residence of Napoleon Bonaparte, was continued.

(Repealed by Regulation VII of 1818.)

Regulation XV of 1817—“With a view to the improvement and security of the public revenue,” a duty of rupees three per maund (of 40 seers of 82 *sicca* weight) was imposed

on "foreign salt" imported by sea into any port of the Company's territories.

(Repealed by Reg. XV of 1825 and Act XVI of 1837.)

Regulation XVI of 1817—A duty of Rs. 24 per seer imposed on "foreign opium" imported into the Company's territories.

(Repealed by Reg. XV of 1825 and Act XXIX of 1871.)

Regulation XXI of 1817—A revised tariff for various kinds of articles imported or exported was prepared in three Tables.

The first Table differentiated the import duty on British manufacture and the manufacture of "Foreign Europe." For the latter the rate was 5 per cent. except in the case of spirits and wines for which the rate was 10 per cent. For the former, *i.e.*, articles of British manufacture, a good number was altogether duty-free, and where a duty was laid down it was $2\frac{1}{2}$ per cent., except that in the case of spirits and wines the rate was the same as for "Foreign Europe."

The second Table comprised goods which were neither the produce of British manufacture nor of Foreign Europe. Differential rates of import duty were laid down according as such goods were imported on British bottom or on a foreign bottom. When on British bottom, the rates varied from 5 to 10 per cent. and when on foreign bottom, double these rates. Similar difference was maintained for drawbacks.

The third Table specified the rates of duty for export of goods from Bengal by sea to the United Kingdom, and the proportion of drawback on the inland duties paid for the same. The export rate was generally 5 to 10 per cent. It was lower, *viz.*, $2\frac{1}{2}$ per cent. only in case of certain articles from Nepal, and the Vizier's territories.

The main feature of the Regulation was the addition of a large number of duty-free articles (British manufacture) to the list in Regulation IV of 1815. These additions included steel, iron, etc., cutlery, copper or iron sheets, tin, wires of brass, and generally metals wrought or unwrought, and articles like mathematical instruments, locks, hinges, nails, hatchets, bellows, braziers, etc. Anchors, pumps, tar, pitch, etc., specified as included in marine stores, were exempted from duty. Coal, oils, piece-goods, seeds of all sorts, tallow, tobacco, were, however, subject to the $2\frac{1}{2}$ per cent. import duty.

(Repealed by Regulation XV of 1825 and Act VI of 1863.)

Regulation VII of 1818—relating to the conduct of the trade of foreign nations.

Rescinded Regulations VI of 1812 and XX of 1813, and repeated the provisions of Regulation III of 1811 with certain minor changes, referring to the authority given by the Act on the subject in 37 Geo. III, Cap. 117, authorising the Company to make Regulations not inconsistent with the terms of the treaties with such nations in amity with His Majesty. The security bond required by Regulation III of 1811 in such cases was abolished.

(Repealed by Regulation II of 1830.)

Regulation IV of 1819—To relieve the Board of Revenue, a separate Board in the customs, salt and opium department was constituted, with such number of members as the Governor-General in Council might from time to time appoint : and a single member might, if so authorised, act for the entire Board.

(Repealed by Act XLIV of 1850.)

Regulation V of 1820—imposed a duty of 4 annas per maund on tobacco for inland transit (once only), a drawback

of the whole being allowed when the same was exported on a British bottom to the United Kingdom.

(Repealed by Regulation XV of 1825 and Act VIII of 1868.)

Regulation II of 1822—modified the rules regarding officers employed in the collection of Government customs.

(Repealed by Act XXIX of 1871.)

Lord Amherst

Regulation V of 1823—In modification of Reg. IX of 1810 and subsequent Regulations, the inland (or transit) duty charged on piece-goods was reduced from $7\frac{1}{2}$ per cent. to $2\frac{1}{2}$ per cent. (the same as the import rate, by sea, of such goods), but no drawbacks allowed on exportation of the same. For exportation, the following revised rates were laid down :—

	On British bottoms	On foreign bottoms
<i>(a) Cotton piece-goods—</i>		
Manufacture of British territories ..	Free	$2\frac{1}{2}$ p.c.
Manufacture of Oudh and other foreign States,		
if exported to Europe	Free	$7\frac{1}{2}$ p.c.
if exported to other quarters ..	$2\frac{1}{2}$ p.c.	$7\frac{1}{2}$ p.c.
<i>(b) Silk and mixed piece-goods—</i>		
if exported to Europe	Free	$7\frac{1}{2}$ p.c.
if exported to other quarters ..	$2\frac{1}{2}$ p.c.	$7\frac{1}{2}$ p.c.

(Repealed by Reg. XV of 1825 and Act VIII of 1868.)

Regulation VIII of 1824—Revised rates of toll on boat, rafts, timbers and the like passing through the rivers Bhagirathi, Jellinghi, Ichamati, Mathabhanga and Churni.

[Modified, as regards navigable channels—by Act V(B.C.) of 1864 and repealed by Act XII of 1873.]

Regulation X of 1825—Strictly prohibited Commercial Agents from trading on personal account : see Regulations XXXI of 1793 and XXXVII of 1803.

(Repealed by Act VIII of 1868.)

Regulation XV of 1825—In pursuance of the Treaty concluded with the Netherlands, the rates of duty in the three Tables in Reg. XXI of 1817 were revised generally.

Schedule I laid down rates of import duty (*a*) on British bottom and (*b*) on foreign bottom, for various kinds of articles. The general principle of double rate for the latter was maintained. There was a further classification of—(*i*) products of the United Kingdom, (*ii*) products of foreign Europe and U. S. America, and (*iii*) products of other places. The rates of goods on British bottoms were raised from $2\frac{1}{2}$ per cent. to 5, $7\frac{1}{2}$ and 10 per cent., the corresponding rates for foreign bottoms being double. The rate for salt was Rs. 3 per maund, when on British bottom, and Rs. 6 when on foreign bottom.

Schedule II gave a revised Table of drawbacks on re-exports on—(1) British bottom and (2) foreign bottom, the proportion of the latter being half.

Schedule III laid down the export-rates of country goods, when exported by sea—(*a*) on British bottom, (*b*) on foreign bottom, each being again differentiated for—(*i*) exports to U. K., Europe and U. S. A., and (*ii*) to places other than these. There was no export duty on the export of the specified articles when on British bottom to U. K., Europe and U. S. A. For other articles the rate was $2\frac{1}{2}$ per cent., provided no transit duty or Town duty had been paid. Of the articles thus duty-free for

export, but subject to customs or Town duty (rates within brackets) the more important were :—betelnut ($7\frac{1}{2}$ and 5 p.c.), blankets (5 p.c.), shoes and slippers (5 p.c.), unwrought brass ($2\frac{1}{2}$ p.c.), carpets ($7\frac{1}{2}$ p.c.), *chunam* (10 p.c.), unwrought copper (10 p.c.), cotton wool (12 annas per maund), cotton yarn ($7\frac{1}{2}$ p.c.), fringes, tape and thread ($7\frac{1}{2}$ p.c.), furs (5 p.c.), *ghee* (10 per cent.), gold and silver tissues and lace and thread (5 p.c.), grain of all sorts (*nil*), gunnies (5 p.c.), raw hides (5 p.c.), *jarool* timber (10 p.c.), iron and manufactured iron (10 p.c.), *kutch* (5 p.c.), lac (5 p.c.), oilseeds ($7\frac{1}{2}$ p.c.), oils ($7\frac{1}{2}$ p.c.), paper (5 p.c.), cotton piece-goods ($2\frac{1}{2}$ p.c.), raw silk ($7\frac{1}{2}$ p.c.), rose water ($7\frac{1}{2}$ p.c.), saltpetre ($7\frac{1}{2}$ p.c.), *sal* timber (10 p.c.), *seemul* cotton (*nil*), shawls (10 p.c.), silk raw filature ($7\frac{1}{2}$ p.c.), soap (5 p.c.), spirits after European manner (6 annas per gallon), steel (5 p.c.), sugar (5 p.c.), tobacco (4 annas per maund), wax and wax candles (10 p.c.), woollens (5 p.c.).

When exported on foreign bottoms to U. K., Europe or U. S. A., some of these articles were subject to export duty in addition to the customs and Town duties (shown in brackets) : so also all exports to other places, whether on British or foreign bottom. For the last an export duty varying from $2\frac{1}{2}$ p.c. to $7\frac{1}{2}$ or 10 p.c. was levied. There was a similar differentiation for drawback.

The position, to explain, was as below :—

Sugar—inland (excise) duty—5 p.c. : drawback on export—*nil*. Further 5 p.c. export duty if on a foreign bottom to a place other than U. K., Europe or U. S. A.

Cotton wool—12 annas per maund, no drawback on export : further 12 annas if to a place other than U. K., Europe, or U. S. A. on a foreign bottom.

Oils— $7\frac{1}{2}$ per cent., no drawback.

Gunnies— $5\frac{1}{2}$ per cent., drawback $\frac{1}{2}$ per cent. : an export duty of 5 per cent. (no drawback) when to a place



other than U. K., Europe and U. S. A., on other than a British bottom.

[Repealed by Acts XIV of 1836 (as regards Inland duties), VI of 1863 (Opium) and XVI of 1874 generally.]

Regulation IX of 1826—transferred the superintendence of the custom-house at Patna from the Board of Revenue in the Central Provinces to the Board of Customs at Calcutta. The latter was vested with the control of the other customs in the Central and Western Provinces, and in the Province of Cuttack.

(Repealed by Reg. I of 1833 and Act XXIX of 1871.)

Lord William Bentinck

Regulation II of 1828—rescinded in part the rules regarding trade in *Chunam* (Reg. I of 1799).

(Repealed by Act VIII of 1868.)

Regulation IX of 1829—Commercial Residents and Agents of the Company, subjected to the jurisdiction of civil and criminal courts, like other persons, saving the privileges and immunities as British subjects.

(Repealed by Act VIII of 1868.)

Regulation XV of 1829—Sundry rules for valuing goods imported by sea, for the assessment of the Calcutta customs.

(Repealed by Reg. VI of 1833 and Act VI of 1863.)

Regulation XVI of 1829—increased rates of salt duty for salt imported through the Ceded and Conquered Provinces.

(Repealed by Act XIV of 1843.)

Regulation II of 1830—re-enacting Regulation VII of 1818 regarding trade with foreign nations, with some modifications.

(Repealed by Act XXIX of 1871.)

Regulation III of 1830—Some modifications of the rates in Regulation XV of 1829.

(Repealed by Acts VI of 1863 and XVI of 1874.)

Regulation. I of 1833—Sadar Board of Revenue at Allahabad, vested with the superintendence of the Customs and Town duties in its jurisdiction.

(Repealed by Acts XV of 1874 and VIII of 1875.)

Regulations III and XI of 1833—Registry of imports and exports at the Settlements of Prince of Wales Island, Singapore and Malacca.

(Repealed by Act XL of 1850.)

Regulation VI of 1833—Rescinding part of Reg. XV of 1829 and issuing other rules therefor for goods imported by sea.

(Repealed by Acts VI of 1863 and XVI of 1874.)

Regulation I of 1834—Revised boundary of Calcutta for the purpose of the Calcutta Town duty, in the place of the boundary given in Reg. X of 1810 :—

The new canal from its junction with the river Hooghly at Bagbazar to its junction with the Beliaghata and Entally canals near the *chowkey* at Meergunge. Then to Ballygunge customs *chowkey* to Tollygunge : then the right or northern bank of Tolly's *nallah*.

On the western side—from Bally *Khal* along the high road from Hooghly to Sangral, through Salkia, Howrah and Sibpur, then to Sibpur Point, opposite (obliquely) the mouth of the Tolly's *nallah*.

(Repealed by Act VIII of 1868.)

CHAPTER VII

SALT

Grant in his Analysis of the Finances of Bengal, which he submitted to the Governor-General in 1786, stated that along about 330 miles of Bengal's sea-coast from Balasore to Chittagong, and over an area of about 7,000 sq. miles, there were over 12,000 *khallaries* or salt-manufacturing plants, yielding over thirty lakhs of maunds of salt every year. He further stated that over 45,000 *mullangees* or salt-makers, besides inferior workmen and superior traders, were employed in this industry. The consumption in Bengal was then estimated at 20 lakhs of maunds (for a population of 10 million), and the rest of the product was exported to Behar and other parts of India.

2. During the pre-British period a duty of 5 and $2\frac{1}{2}$ per cent.¹ was levied on trade in salt. Besides this, Grant refers to a practice irregularly allowed, of delivery of salt at Hooghly or Murshidabad at certain fixed prices which left the buying merchants—a few favoured persons called *Fakher-ul-Tazar*—a clear margin of Rs. 40 per hundred maunds or two-thirds of the sale prices to retail dealers.² Estimating at the lower rate of $2\frac{1}{2}$ per cent. and the fixed price of Rs. 60, the revenue from the trade

¹ $2\frac{1}{2}$ per cent. from Mussulmans and 1 per cent. from Hindus : Report of the Committee of Secrecy, 1772. Also Grant's Analysis.

² This meant trade monopoly to a few privileged merchants. Grant says that not unoften did these merchants abuse their monopoly by raising the sale prices to Rs. 80 or more per hundred maunds.



354 ANALYTICAL SURVEY OF BENGAL REGULATIONS

in salt during the Mughal period, would work out to about Rs. 45 lakhs.

3. In 1760, when Mir Kasim was installed in the Nawabship of Bengal, a claim for free trade in salt was avowed by the Company. Mir Kasim seems to have demanded a higher rate of duty uniformly from all traders, but agreed later, through Vansittart, to a rate of 9 per cent. This, however, was not approved by the Governor-General's Council. The Company's right of free trade was claimed under the general privilege which had been obtained from Furrokh Sher in 1717. As a result Mir Kasim abolished all customs or duties whatsoever on salt, whether the trade was carried on by the English Company or native merchants or others; and in 1764 the Court of Directors ordered the formation of a plan by which the trade in salt might be concentrated in the Company's business.

4. Then followed the acquisition of the *Dewany* in 1765, which changed the entire situation. It was assumed that with the acquisition of the *Dewany* the entire trade in salt (also betelnut and tobacco) had vested in the Company. Clive drew up a plan which in effect created an "exclusive Company or Society" of European servants, who enjoyed the profits of the concern in lieu of salary.¹ On 3rd September, 1766, a Regulation was passed fixing the price at which salt would be sold by these European servants to the natives, at as much as Rs. 200 per hundred maund. The practice of advancing money to the *mullangees* gradually developed: and this enabled the actual manufacturers to obtain funds for the initial expenses,

¹ Fifth Report of the Parliamentary Select Committee, 1812.

and also secured for the Company's servants a certainty of trade in the article.

5. Clive's plan was not approved by the Court of Directors, though it was not finally put ^{—not approved by the Court of Directors.} an end to till October, 1768. In the mean time, in 1767, the Directors repeated their earlier orders that none but Indians should be concerned in the inland trade in salt. The new Regulation then passed, restricting the inland trade to the natives of the country, fixed a duty of as much ^{50 per cent. duty imposed.} as 50 per cent. on the value of the salt manufactured. This, with a 15 per cent. duty on betelnut, was estimated to produce an annual revenue of only 12 or 13 lakhs of rupees.¹

6. But even this expectation was not realised. By 1772, the receipts from this duty amounted ^{Warren Hastings's scheme of farming.} to £45,027 (or Rs. 4,50,270 of the time), as against the net proceeds from sale in 1766-67 of £118,296, according to Clive's plan. Amongst the many innovations introduced by Warren Hastings, one was to assume the management of the manufacture of salt as a monopoly, though not exactly on the lines of Clive's plan. His scheme was to let out salt-manufactories in farm for five years. This, however, did not show any material improvement in revenue, and on the expiry of the period it was decided to let out the salt *mahals* to the zemindars and other substantial men on annual leases on payment of a ready money-rent, including duties, the salt being left to disposal by the lessees, as in the plan of 1772.

¹ Fifth Report, 1812, *ibid.*

7. This experiment did not prove satisfactory either. The *mullangees* needed better arrangement for advances of money to enable them to work, and the revenues also did not show much improvement. The system of leases was abandoned in 1781, and in its place European Salt Agents were appointed. These Agents moved about in the interior of the salt-area, advanced money to the *mullangees* for carrying on their work, took delivery of the entire production on payment to them, of the stipulated price, and then sold it to wholesale dealers at prices fixed ¹ by the Governor-General in Council. The effect of this change was striking. The revenues during the first three years averaged £464,060 (or over 46 lakhs of rupees), and by the time Lord Cornwallis arrived (1786) it rose to £522,450 or over 52 lakhs of rupees.²

8. The salt industry continued to receive full encouragement from the Government for about thirty years. The manufacturers received advances from the Agents to enable them to carry on their work to best advantage, and also enjoyed certain special immunities from the processes of the zemindars (*e.g.*, distraint, etc.) under whom they were tenants. Measures were adopted to prevent adulteration so as to maintain a good market, and competition from other parts of India was carefully controlled. The industry thus thrived and grew steadily; and the Government-revenue which was about 53 lakhs of rupees in 1793, rose in twenty years to over one crore and thirty lakhs. What was more important from the national point of view was that over a million persons, as manufacturers, workmen and labourers, must have

¹ The price fixed was Rs. 200 per hundred maund.

² By 1811-12, it rose to £1,360,160 or about 117 lakhs of *sicca* rupees, on reduced exchange value then prevailing. Fifth Report, 1812.

found employment and a living in this industry of the country.

9. Unfortunately, however, a change of far-reaching consequence commenced about the year 1817. From this time foreign salt began to be imported in large quantities, gradually ousting the market for local salt. The policy adopted by the Company in this respect has been condemned by later critics, and with obvious good reasons. The English salt imported paid nominal freights, almost as ballast¹: and the import duty at first fixed at Rs. 3-4-0 was gradually reduced to Rs. 3, Rs. 2-12-0 and Rs. 2-8-0. The encouragement given to the local manufacturers also gradually ceased.² Their methods of manufacture by boiling sea-water, were crude; but there is nothing in the Regulations to indicate that any attempt was made to improve these methods. Ultimately this industry, so thriving at one time and providing employment to over a million people, was practically ruined.³ Bengal thus became dependent for her salt on Liverpool, Germany, Aden, Muscat, Jedda, Bombay and Madras.

10. Nor did the finances of the Province show any great improvement. The steady growth of revenue from salt which was so marked during the preceding twenty years was stopped by the impetus given to importation of foreign

¹ Dr. P. N. Banerjea's *Indian Finance*, p. 192.

² By 1835, imported salt had supplanted local salt to such an extent that the previous practice of auction sales was abandoned and warehouses were established.

³ A parallel instance of similar consequence is the industry of weaving, once so famous in Bengal. The salt industry, however, struggled for a longer period. "The trade in Cheshire salt rose in importance about the year 1835; and thenceforward imported salt gradually ousted the native product in Bengal proper until, by 1873-74, local manufacture had ceased and the accumulated stock had become exhausted." *Imperial Gazetteer*, Vol. IV, p. 248.

There is an attempt in recent years to revive the industry: but the task is up-hill. The traditional aptitude of the local people is now lost.

salt. The average receipt of the 30 years from 1820-21 to 1850-51, was about Rs. 135 lakhs,¹ or practically the same as in 1810-11. In 1856-57 this revenue fell to Rs. 102 lakhs, though including the supply in the North-Western Provinces as then constituted. Possibly the authorities calculated on the profit earned by the foreign manufactories, but that helped Bengal very little.

11. The propriety of assuming the monopoly of salt was a subject of hot controversy, almost from the beginning. As early as 1776, Philip Francis² expressed the view that salt should be "as free and unburthened as possible." The right method of approaching the industry for the purpose of revenue was, he said, "by way of a duty only," and a light duty. But more poignant were the observations of the Parliamentary Select Committee of 1783. Salt was not a luxury, but a necessity even of the poorest, and the Committee were definitely of opinion that "salt was by no means a safe and proper subject for so many experiments and innovations," as followed upon the assumption of the monopoly of the industry by the Company. They also criticised the methods of the Agents as oppressive.³ The various Regulations from and after 1793, aimed at reducing the scope for oppression; but

¹ Taken from the statistics collected by Dr. P. N. Banerjea in his *Finances of the Days of the Company*.

² Salt and Opium revenue, he said, should be "by way of duty only." The existing contracts for Salt had, in his opinion, led to depopulation of the Salt districts, and what had been gained in a monopoly, itself contrary to the Company's institutions, was lost by the injury done to agriculture.

³ "There is evidence enough on the Company's records to satisfy your Committee that those people (the *mullangers*) have been treated with great rigor, and not only defrauded of the due payment of their labour, but delivered over like cattle in succession to different masters, who under pretence of buying up the balances from their preceding employers, find means of keeping them in perpetual slavery. For evils of this nature, there can be no perfect remedy as long as the monopoly continues." Ninth Report of the Parliamentary Select Committee, 1783.

the monopoly was retained, with the entire control and financing directly in the hands of the Company. It thus happened that when the Company retrenched their hands, the whole industry collapsed.

12. The legal aspect of the assumption of monopoly in salt industry, has also been a subject of controversy. Grant in his Analysis (under head Salt Lands) put forth a strained argument that the practice during the Mughal Government of favouring particular merchants in the trade of salt showed that the industry itself belonged to the Government. But what he overlooked was that there was a duty ($2\frac{1}{2}$ per cent. and 5 per cent.), and if prices were fixed,—even if they were preferential for certain favoured merchants,—it was done obviously to fix the value on which the duty would be calculated. It meant no more than that the State could impose only a duty and could vary this duty as it thought proper : and not that it monopolised the industry itself. But Grant was obsessed by his idea of the Muhammadan constitution. His idea was that under that constitution all products of land, water, sea or forest, were the absolute property of the Sovereign : and if the Sovereign took only a share or imposed only a duty, it was because the Sovereign thought such method expedient. This theory found favour for some time : it was definitely abandoned for land, but was maintained for certain products as salt and opium. All the right the Company as such had, was the right of free trade under the privilege granted by Emperor Furrokh Sher. When they constituted the Government of the country, a monopoly could be justified only so far and so long as it aimed at regulating and developing the industry on a sound footing for the benefit of the people governed. But when this objective was lost there could not be any justification for continuance of the monopoly :

Legal aspect of
the salt-monopoly :
early discussions.

it only strangled private enterprise and thus eventually brought about the ruin of this industry in Bengal.

APPENDIX TO CHAPTER VII

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO SALT

Lord Cornwallis

Regulation XXIX of 1793—(Rules of 10th Dec., 1788, with some alterations and amendments): Declared that Government “reserved to itself the exclusive privilege of manufacturing salt as a source of public revenue.”

Salt Agents to be appointed on oath, who would advance money either to (a) contractors such as *byaparis*, or others, or to (b) *molungees* or labourers and salt workers direct: all contracts and engagements to be in writing (attested by at least two credible witnesses) specifying the quantity of salt to be made and supplied: no compulsion to be used: preference to be given to persons by whom salt was actually manufactured so as to avoid intermediaries as far as possible: special protection of persons who engaged for salt-manufacture, against coercive measures by zemindars, when they were tenants under the latter: so also in criminal cases or enforcement of civil court decrees against them—the object being to prevent dislocation in salt-making work.

Supervision and control by the Board of Trade.

(Repealed by Regulations XX of 1817 as regards functions of *Darogas* of Police, and wholly by Act X of 1819.)

Regulation XXX of 1793—declared that “Salt shall not be made in the Provinces of Bengal, Behar or in the part

of Orissa under the dominion of the Company, excepting on account of Government or with their sanction; and all salt made directly or indirectly in breach of this prohibition, is declared liable to confiscation." It then provided further that no foreign salt could be imported into the above territories of the Company, except on account of Government. An exception was made for Muscat Salt from Bombay or Muscat, provided that the quantity in any one vessel did not exceed 200 maunds, when from Bombay and 500 maunds, when from Muscat.

The same Regulation empowered the Salt Agents and their officers to seize salt illegally manufactured, taking the assistance of the Magistrate or Police where necessary: delay in reporting to the Board of Trade or irregular acts being liable to prosecution in the *Dewany Adalat*.

Landholders, their farmers and officers were also enjoined to report illicit manufacture or import of salt: under pain of certain penalties for default. Boats and cattle used for illicit salt were also liable to confiscation.

(Repealed by Regulations XL of 1795 and VI of 1801.)

Regulation XLII of 1795—Rock salt from Bombay or Muscat required a certificate, and to be landed to Company's salt-*golah* first: sections 34 and 35.

(Repealed by Regulation XL of 1795).

Sir John Shore

Regulation XL of 1795—The limit of 200 maunds for import of Muscat or other foreign salt, was raised to 500 maunds in any one vessel. Quantities imported in excess were liable to be confiscated.

The same Regulation provided for rewards to informers about illicit salt.

(Repealed by Regulation VI of 1801.)

Regulation LII of 1795—required license for importation of salt into the port of Calcutta on ships built and fitted out within the Company's territories in Bengal and Orissa.

(Repealed and replaced by Regulation X of 1819.)

Lord Wellesley

Regulation IV of 1798—The resources of Government from the manufacture of salt “being liable to suffer much injury from the officers of the *Chowkies* stationed in different parts of the country to guard against illicit trade in that article, being obliged immediately to quit their stations on summons” from Courts or Magistrates, special procedure of sending copy of the process to the Board of Trade, or Salt Agent, or the *Ameen* at Narainganj, was laid down.

[Repealed and replaced by Regulations XX of 1817 (Police), and X of 1819.]

Regulation IV of 1800—Common or Alimentary salt was often adulterated with *kharee-nun* manufactured chiefly in Behar. The *kharee-nun* was found on analysis to be the true Glauber's salt, and prejudicial to the health of those who used it. “This practice (of adulteration) being a gross fraud highly injurious to the fair trade in salt,” this Regulation prohibited such adulteration with *kharee-nun* and other substances such as natron or native fossil alkali, and also vegetable alkali or pot-ash, and declared that all such adulterated salt would be confiscated and destroyed and the possessor was liable also to a fine of Rs. 10 per maund. The Police were given the necessary power, and the owners were allowed to sue in the *Dewany Adalat* if they alleged that the salt was not adulterated. Provision was also made for reward to the informers from a share of the fine imposed.

(Repealed and replaced by Regulation X of 1819.)

Regulation VI of 1801—Illicit manufacture of salt not being effectively checked, more rigorous rules were laid down by this Regulation. They included punishment of landholders if any unauthorised *khallari* (or salt pan) was found within their estates : also greater powers to officers of the Salt Agents, and the Police : also rewards for Agents and informers.

This Regulation also included Benares where salt could not be manufactured except on account of Government or with their express sanction.

(Partially repealed by Regulations XII of 1801, VI of 1804, XX of 1817, and wholly by Regulation X of 1819.)

Regulation XII of 1801—provided that except in cases of illegal manufacture, sale or trade, the power of seizure under section 11 of Regulation VI of 1801, was not to be exercised by a Magistrate, Collector, Commercial Resident or Agent unless specially authorised by the Governor-General in Council.

(Repealed and replaced by Regulation X of 1819.)

Regulation XXXIX of 1803—"Whereas arrangements were adopted, during the administration of the late provincial Government in the Provinces ceded by the Nawab Vizier * * * for the purpose of obtaining a revenue from the importation and sale of foreign salt in those Provinces and from the manufacture and sale of salt produced within the said Provinces," this Regulation laid down that "foreign salt shall not be imported into any part of the Ceded Provinces, excepting on account of Government, or with their special sanction," and salt imported in contravention of this, was liable to confiscation.

The Regulation also laid down that "salt shall not be manufactured in any part of the Ceded Provinces excepting on account of Government or with their express sanction" : all salt manufactured otherwise being liable to confiscation.

Detailed rules were laid down for the mode of administration of this arrangement.

(Repealed by Regulation VI of 1804.)

Regulation XLVIII of 1803—provided for empanelling a sufficient number of respectable merchants or dealers in salt, by the Judge in summary trials of cases of adulteration with *kharee-nun*, and relaxing security in certain cases.

(Repealed and replaced by Regulation X of 1819.)

Regulation VI of 1804—The claim in Reg. XXXIX of 1803, that salt could be manufactured in the Ceded Provinces only for Government, was rescinded; and it was declared that no salt manufactured in those Provinces would hereafter be on account of Government. But when exported out of the said Provinces, it was to pay a duty of rupee one per maund : the same as would be paid on salt imported into those Provinces across the boundaries. There was an exception with regard to salt taken from those Provinces into Benares or into Goruckpore. The assessment of *Nimmuck sayar mahals* in the Ceded Provinces was directed to be added to the *jumma* of the zemindars and farmers.

The Salumba and Balumba salt had to pay a duty of Rs. 2-4-0 per maund (under Regulation VI of 1801) when imported into Benares : this rate was reduced to Re. 1.

(Partially repealed by Regulations XI of 1804 and IX of 1810, and entirely by Act VIII of 1868.)

Regulation VII of 1804—imposed a duty of 12 annas per maund on “all alimentary salt produced within the Conquered Provinces situated on the right bank of the river Jumna and belonging to the Company, when imported into the Ceded Provinces or into that part of the Conquered Provinces situated within the Doab.” For alimentary salt exported from the Ceded and Conquered Provinces, the rate fixed, was, however, 4 annas per maund.

(Repealed by Regulations XI of 1804 and IX of 1810, and finally by Act VIII of 1868.)

Regulation XI of 1804—Alimentary salt imported into the *zillas* situated on the right bank of the river Jamuna, subjected to a duty of 12 annas per maund.

(Repealed by Regulation IX of 1810.)

Sir George Barlow

Regulation IX of 1806—laid down detailed rules regarding *chalans*, *rowanas* or passes for transportation of salt.

(Repealed and replaced by Regulation X of 1819.)

Lord Minto (First)

Regulation IX of 1810—Section 18 laid down revised rates of duty on the importation of salt, not being salt of the British territories or of any foreign State, into the Doab and for which the prescribed duty was not paid into the Province of Benares :—

(*a*) Lahore salt—Re. 1 per maund : (*b*) Sambur salt—12 annas per maund : (*c*) Doodwan salt—12 annas per maund : (*d*) Balumba salt—8 annas per maund : (*e*) Salumba, Furrah, Boraree or any other alimentary salt (excepting salt purchased at the Company's sales at Calcutta)—4 annas per maund.

(Repealed by Regulations III of 1811, I and XIX of 1812, VI of 1814, IV of 1815, XIII of 1816, XXI of 1817, IV of 1819, V of 1820, II of 1822, V of 1823, XV of 1825, IX of 1826, XV of 1829, I of 1833 and Acts XIV of 1836, XIV of 1843.)

Regulation X of 1810—Lahore, Sambur and other salts made liable to the Town duties established by this Regulation.

(Repealed by Act XVI of 1874.)

Regulation XVII of 1810—The above rates were revised by this Regulation, *viz.*, for (a), (b) and (c)—Re. 1 per maund : for (d)—12 annas : for Salumba and Furrah salt—8 annas : and for any other alimentary salts, excepting salt purchased at the Company's sales in Calcutta—4 annas.

(Section 8 shows that these duties did not exempt the articles from the Town duties under Regulation X of 1810.)

(Repealed by Regulations XX of 1817 and XVI of 1829, and Acts XIV of 1836 and XIV of 1843.)

Regulation VIII of 1812—declared saltpetre to be a monopoly on the part of Government in the Provinces of Bengal, Behar, Orissa and Benares : rules accordingly made with a view to securing for Government, all the Saltpetre produced in these Provinces.

Saltpetre not to be manufactured without the express sanction of Government : manufacture in contravention liable to seizure and confiscation : advances and contracts as in the case of Salt : no compulsion to be used : landholders and public officers to assist Agents : rewards for informers.

(Repealed by Regulation IV of 1814.)

Lord Hastings

Regulation XXII of 1814—referred to the notification of 4th May, 1804 (soon after the acquisition of Cuttack), announcing “ the resolution of Government to reserve to itself the exclusive privilege of manufacturing salt in the Province of Cuttack ” : and laid down “ rules for the future conduct of the manufacture of salt exclusively on account of Government, throughout the whole of *zilla* Cuttack.”

Rules in the previous Regulations extended : exportation of salt *by land* from Calcutta to Midnapur or any

other district strictly prohibited : exportation to be only by sea, and that on account of Government only—otherwise liable to confiscation, including boats, *dhonees* or other vessels used.

(Repealed and replaced by Regulation X of 1819.)

Regulation X of 1816—For the “promotion of the commercial intercourse between India and Great Britain, and to the general interests of the British nation,” exportation by sea, of Saltpetre except on vessels belonging to British subjects, was forbidden : likewise for imports.

(Repealed by Regulation XV of 1825.)

Regulation XV of 1817—For the “improvement and security of public revenue,” a duty of Rs. 3 per maund was imposed on “foreign salt” (*i.e.*, salt made outside the territories immediately dependent on the Presidency of Fort William) on importation by sea.

(Repealed by Regulations XV of 1825 and Act XVI of 1837.)

Regulation X of 1819—consolidated into one Regulation the previous rules regarding manufacture, etc., of salt, with some modifications.

To prevent adulteration of alimentary salt, the transportation by water lower down the river Ganges than Ghazeepore, or by land or by water to the right bank of the Caramunessa,—all *Salumba*, *Balumba*, *Bopcha*, *Sambur* and other kinds of salt produced in any part of Benares, the Ceded and Conquered Provinces and the countries to the north and westward thereof, was forbidden : rules laid down for search and confiscation of contraband. Adulteration with *Pungah* salt was also forbidden.

[Amended and modified by Acts IV of 1832, XXIX of 1838, XVI of 1848 and III of 1851, till finally repealed, so far as the Presidency of Fort William, by Act VII (B.C.) of 1864.]

Lord Amherst

Regulation I of 1824—Rules for the acquisition of land for public purposes including land required for the purpose of the Salt Department.

(Partially repealed by Act VI of 1857 and finally by Act VIII of 1868.)

Lord William Bentinck

Regulation X of 1826—prohibited manufacture of *Nunchai* or any description of saline substance used as a condiment with food, excepting on account of or with the permission of Government. Also provided for the retail sale of salt by the Government officers in certain cases.

[Repealed by Acts XVI of 1848, VII (B.C.) of 1868 and VIII of 1875.]

Regulation XVI of 1829—referred first to Reg. XVII of 1810, by which certain rates were levied on several kinds of alimentary salt produced in the western parts of Hindustan and imported through the Ceded and Conquered Provinces and Benares, and to Regulation X of 1810 which laid down also Town duties on these imports. The variable duties thus established led to much abuse from the difficulty of discriminating between the different kinds of western salts; and hence revised and simplified rates were prescribed. The rate was Re. 1 per maund generally, except for Sambur and Doodwana salt for which the rate was Rs. 1-8-0. The Town duty under the existing Regulations was not to be levied on alimentary salt imported into Benares, Mirjapur and Ghazeepur.

(Repealed by Act XIV of 1843.)

Regulation of IV 1832—Explained certain provisions of Regulation X of 1819.

[Repealed by Acts VII (B.C.) of 1864 and VIII of 1875.]

CHAPTER VIII

OPIUM

During the pre-British period Opium was a source of special revenue to the Government. The cultivation of the poppy was extensive in Behar and Oudh, but opium was produced also in parts of Rangpur area in Bengal. Grant, in his Historical Analysis of the Finances of these Provinces,¹ estimated that about four thousand chests of opium used to be exported² from Behar annually, yielding a net revenue of Rs. 10 lakhs. He wrote :—" Opium, which may be considered the peculiar produce and stable commodity of the country (Behar), might fairly be estimated to return in gross, under rules of a private or public monopoly of necessary existence everywhere in India, 20 lakhs of rupees for about 4,000 chests exported yearly ; including a moderate charge of sovereign territorial rent with full cost of labour, and profit on stock, amounting in value to one-half of the whole quantity of produce." This does not give any very clear idea of what exactly was the method adopted for the levy and collection of this revenue. According to the view of the Parliamentary Select Committee of 1812 (Fifth Report), the practice

¹ Supplement, dated 30th June, 1787.

² It is not clear whether this meant only the opium "exported" to other countries as China : or also included the quantities issued for local consumption. Sir John Strachey in his "India" (3rd Ed., p. 154) writes—"There is little doubt that more opium was consumed in India under the native rule 150 years ago (*i.e.*, about 1720) than now." But the basis of this observation is not very clear. The production had certainly increased considerably : and about the period when Sir John wrote, the consumption in Bengal and Behar had risen to over one seer per one thousand of the population.

with the Mughal Government was to farm out the cultivation and the manufacture, "on an exclusive privilege for a *peiscush* or annual payment in advance." Probably different methods were followed in different parts¹; but whatever these methods, they clearly indicated that the State exercised special authority over the production and sale of this article. It was thus that when the East India Company acquired the Dewany in 1765, they considered themselves justified to assume complete control and monopoly of this product.

2. But apart from any previous "constitutional" practice, State-control over the production and use of such a dangerous and pernicious drug as opium, would be fully justified at any time. It was, however, not from this point of view that the subject was approached by the Company. One Regulation (XIII of 1816) mentioned "limiting the use of opium, as far as possible, to cases in which it may be necessary or salutary," but the main object throughout was to obtain as large a profit from the monopoly as possible.² The provisions made in the various Regulations, for assistance to poppy-cultivators with advances, their liabilities in case of failure to supply the stipulated quantity, the heavy penalty on the contractors (when the contract system prevailed) in case of their inability to supply the full quantity,—all

State-control over opium—always justifiable for checking its use:

—but the main object of the Company was increase in revenue.

¹ For a more detailed account see Historical Notes by Sir J. B. B. Lyall and Mr. R. M. Dane with the Report of the Royal Opium Commission of 1893.

² Francis and others who were opposed to the monopoly-plan, did not argue on the moral or social aspect of the question, but maintained the same object, *viz.*, obtaining an increased revenue. They differed, for they thought that the monopoly would affect raiyat's rent, and hence the Government revenue from land.

The main trade in opium was with China, and payments were received in "gold dust": Shore's minute, dated the 18th June, 1789, para. 135, where he mentions this as the only source of repletion of gold for specie after the Dewany.



these tended directly to increase the output and eventually the proceeds from sale. Thus it was that the net revenue from opium which was Rs. 17 lakhs in 1785-86, rose in fifteen years to about 27 lakhs. In 1810-11 it amounted to Rs. 84 lakhs, and by the end of the Regulation period, it was as much as one crore eighteen lakhs. China was the main customer, and all this happened inspite of the obstacles to "open trade" with that country, which existed at that time.¹ The Opium War which began in 1840, gave a set-back, but when new trade was opened with China after the conclusion of the War, the net revenue from opium rose to rupees two crores seventy-five lakhs in 1850-51; and in 1857-58, the closing year of the Company's administration, the net profit amounted to very near six crores.²

3. The monopoly right of this article was assumed by the Company from the beginning of their administration.³ At first the monopoly was exercised as an exclusive profit of selected officers of the Company, or, as stated by the Select Committee of 1783 (Ninth Report), the opium monopoly "was managed by the civil servants of the

¹ China had passed an edict so far back as 1729, forbidding the importation of opium there from India. The edict was passed not for the purpose of checking opium-habit amongst the Chinese, but for developing poppy-cultivation in that country: and many of the Chiefs there, the *Mandarins*, began to have extensive poppy-gardens. Since 1797 the opium trade with China was contraband, but yet the trade flourished. See Report of the Opium Commission, 1893.

² This included the receipts from the North-Western Provinces as then constituted. The total gross revenue was £6,864,209 and the net £5,818,375: the difference of £1,045,834 representing the cost of the article. The opium revenue represented then over 20 per cent. of the total revenue from all sources.

³ Really the Company's influence began at Patna earlier in 1761.

Patna factory and for their own benefit." This practice was stopped by Warren Hastings in 1773, —stopped by Warren Hastings. Contract system. along with his other measures to reform the Company's administration.¹ The system he introduced was the "contract system." The exclusive privilege of collecting opium from the producers, was given to one person as "Opium Contractor," on stipulation that he would deliver to the Company's godown the entire amount of opium so collected, to be paid at certain rates per maund or chest.² In certain respect this system was analogous to the farming system during the Mughal period : but the material point of difference was that the contractor, instead of paying his *peiscush* in advance, received an advance from the Company on the understanding that he would in his turn advance money to the cultivators and stipulate with them. There was twofold object,—*firstly* to encourage the manufacture of the article by assisting the growers with money which they needed for initial expenditure, and *secondly* to bind them with an obligation to produce and supply at least the quantity stipulated at the time of the advance. On the part of the Company, it was an investment well worth going into for the large profit eventually derived from sale. But, left in the hands of a private contractor and his *gomosthas*, the raiyats suffered oppression, and were sometimes compelled to cultivate the poppy instead of their usual crops. The contract was renewed in 1774, but these malpractices had grown to such an extent that the Parliamentary Select Committee of 1783 had to make very strong

Oppression and compulsion on the raiyats :

¹ Monckton Jones in his "Hastings," writes that the profits in Hastings's plan were "afterwards applied to the special object of providing for the chiefs of divisions, officers newly created by Hastings in 1774."

² The first contractor was one Meer Munher, and the rates stipulated with him were Rs. 320 per chest (two maunds) for Behar opium, and Rs. 350 per chest for Oudh opium.

remarks.¹ In 1785 it was decided that "the contract should be exposed to public competition, and for a term of four years, and be disposed of to the highest bidder," meaning the person who offered to supply the largest quantity at the lowest rate. Simultaneously, provision was made for the appointment of a special Inspector to watch the conduct of the contractor, and the Collectors were directed to see that no compulsion was used on the raiyats. In 1792 (*i.e.*, when the term of the first auction-contract expired) revised rules were promulgated, and these were incorporated later in Regulation XXXII of 1793.

—measure to remedy them.

4. The Preamble to this Regulation explained that "in adjusting the terms of the contracts for the provision of opium in the three Provinces, it was the object of Government to prevent this source of public revenue operating as an oppression on the raiyats, by depriving the contractors of the power of compelling any person to cultivate the poppy, and by ensuring to those who might voluntarily enter into engagements for that purpose, the full price of the opium which they might deliver." The value which the contractor was to receive from the Company, was of course the bid offered and accepted at the auction : and he was required to deliver annually 6,400 factory maunds² of Behar and 1,580 factory maunds of Bengal opium.³

Contract system as in Regulation XXXII of 1793.

¹ Referring to information received by a Member of the Committee, they observed that "fields green with rice had been forcibly ploughed up to make room for that plant (poppy)." The Committee also mentioned an unbelievable practice of fixing a lower figure for the price at which the contractor would receive payment from Government, than the price fixed for the raiyats, *i.e.*, the price at which the contractor was to buy from them.

² Each factory maund contained 40 seers, each seer weighing 72 *new* rupees and ten annas. The opium was to be delivered in chests, each chest containing two factory maunds.

³ This limitation of quantity got automatically abolished with the introduction of the Agency system in 1799.

Should the contractor fail (except for reasons of natural calamity) to deliver the stipulated quantity, he was liable to a penalty of Rs. 150 per factory maund; and should he supply excess, he would get at Rs. 50 per chest, *i.e.*, Rs. 25 per factory maund. The profit of the Company arose from the difference in the price at which they themselves then issued or sold the opium for local consumption or export. The contractor was forbidden to sell or barter direct,¹ and should he do so he was liable to a penalty of Rs. 375 per maund or about Rs. 94 per seer. The general plan was that all opium produced was to be considered as on account of the Company.

5. This Regulation of 1793 next laid down a Table of prices at which the contractor was required to pay the raiyats who produced the opium. These rates varied according to quality of the article, and gave generally about Rs. 2-7-0 per seer for Behar opium and Rs. 3 per seer for Bengal opium.² The contractor was paid advances according to season, and was expected to advance money to the raiyats³: and it was enjoined that no compulsion⁴ would be exercised on the latter for the cultivation of the poppy, save that where a raiyat had received advance he was liable to make it good.

¹ The contractor might, however, provide opium as charitable allowances to certain Brahmins and indulgences to the cultivators to the value of about Rs. 17,000 a year.

² Later, Reg. VIII of 1826 gave a definition of "marketable opium."

³ In justification of this system of advances which was introduced by Warren Hastings, the Select Committee of 1783 mentioned "the inability of the cultivator to proceed in an expensive and precarious cultivation (as this was) without a large advance of money." If so, these advances must have operated as a direct incentive to the production of this pernicious drug, the object being none other than an increase of the Company's revenue.

⁴ The remedy of the raiyat was by complaint in the *Dewany Adalat*, and it is doubtful how far, in the condition of things then prevailing, it was of any help.



6. The details of Regulation XXXII of 1793 are important as they really outline the general plan of internal arrangement, not only during the period of Contract system, but also after the Agency system was introduced in 1799. The Regulation of 1793, provided for two contractors, *viz.*, one for Behar and another for Bengal. The Bengal contractor was not to "import" or provide opium which was the produce of Behar and *vice-versa*. A duty of $2\frac{1}{2}$ per cent. was payable by the contractor for all opium imported from the dominions ceded by the Nawab Vizier, the route by which, it would seem, opium came from other parts of Hindustan. Otherwise, throughout this period, and also afterwards, carriage of authorised opium through the interior of the territories administered by the Company, was free from any impost either as transit-duty or Town duty.

Some observations on the contract system.

No transit or town-duty.

7. The contract system was abolished in 1799 by Regulation VI of that year, the reason stated being that the revenue arising from opium had considerably declined.¹ In its place a European officer, working under the Board of Trade was appointed as Opium Agent: but otherwise the arrangements of advances to raiyats and other internal details were as before, only these advances would be distributed by the Agent instead of any private person as contractor. The effect on the revenue was remarkable. By the year 1810-11, it rose to 84 lakhs of rupees, and when the Select Committee of 1812 examined the position they found that opium provided "the third principal branch of the

Contract system abolished in 1799: Opium Agent.

Remarkable increase in revenue followed.

¹ The contract system was undoubtedly bad: but it is difficult to understand the decline in revenue. The revenue which was 17 lakhs of rupees in 1786-89, had risen to 27 lakhs.



East India Company's territorial revenues in India." The first was land-revenue which then amounted to about $3\frac{1}{3}$ crores of rupees, and the second was salt which gave over $1\frac{1}{3}$ crores.

8. There was no change in the general plan of Agency system adopted in 1799, during the rest of the Regulation period, except that in 1816 a separate agency was established at Rungpore. Regulation XIII of this year consolidated, with some modifications, all the scattered rules in the previous Regulations. It emphasised the previous declarations that all cultivation of the poppy or manufacture of opium was to be considered as only on account of the Government, whether this was done with advances received from the Agents, or not : and that any attempt to evade this would result in confiscation of the article together with the boats, carriages, cattle or packages used. Opium for local consumption had to be obtained from the Government godowns, and Regulation XIII of 1816 required that the vendors must obtain licences from the Collectors, and a penalty was imposed on any person selling opium without licence. Passage of opium across the western borders of the Company's territories, was, as has been stated, controlled by the imposition of a duty of $2\frac{1}{2}$ per cent. Regulation XVI of 1817 next imposed a heavy duty on importation by sea of opium from other parts of India¹

All cultivation or manufacture to be on account of Govt.

Licensed Vendors for the interior.

Duty on importation from outside.

¹ Opium trade between the West coast of India and the Far East, existed from a very early period, so far back as the 16th century when it was largely in the hands of the Portuguese. It continued later in other ways. The East India Company at first tried to restrict or suppress this trade, as it interfered with their Bengal monopoly : Imperial Gazetteer, Vol. VI.

The position changed when other parts of India came under the Company's control. The trade began to be diverted through the port of Calcutta, and hence these Regulations of 1817 and 1825. In 1830 the Government of India authorised the export of Malwa opium subject to the payment of duty.

or outside : and in 1825 (Regulation XV) the rate of this duty was doubled when the importation was on foreign vessels. A drawback of $7\frac{1}{2}$ per cent. was allowed when the same was exported on British vessel from the port of Calcutta, otherwise when on foreign bottom, only up to the rate of the town-duty of $2\frac{1}{2}$ per cent. Other provisions in the various Regulations dealt with matters of details of administration, and in particular provided for measures to stop illicit sale or traffic, and to prevent adulteration which might affect the marketable value of the product.¹

9. As has been observed before, the net revenue from opium rose to about 1 crore 20 lakhs of rupees by the end of the Regulation period of the Company's administration, and in 1857-58 it was very near six crores,² the latter figure including however the receipts in other Provinces annexed during the interval. The opium policy of the Company has thus been adversely criticised as one which aimed only at obtaining a large revenue, but ignored altogether the "moral and social welfare" aspect of the question.³ In

¹ Marketable opium was defined as opium which did not contain more than one-fourth as foreign matter. Those containing up to half were "inferior" and those above half were "useless" (Reg. VIII of 1826). But it is not clear what happened of the "inferior" and the "useless" varieties. Were they destroyed, or were they issued for local consumption at lower prices?

² The rise was steady, and very alluring from the revenue point of view :—

1785-86	..	£169,321	1840-41	..	£874,217 (a fall).
1810-11	..	£839,809	1850-51	..	£2,750,349
1820-21	..	£1,264,329	1856-57	..	£3,860,390
1830-31	..	£1,183,185	1857-58	..	£5,818,375

Abstract by Dr. P. N. Banerjea in his *Finances of the Days of the Company*.

³ Philip Francis and his group of opponents did not take this ground for their objection : nor was any importance laid to it by any of the Select Committees of 1783, 1812 and 1832. The last Committee only discussed the relative advantages of monopoly sale method and method of high export duty. Later economists introduced into the discussion another alternative of additional levy as "income-tax."

the earlier Regulations we find mention of opium being necessary and even salutary, and in one Regulation (XIII of 1816) emphasis was laid on the necessity of supplying the consumers with opium in as pure and unadulterated a form as possible. But the remarkable increase in the revenue cannot be attributed to mere improvement in the *quality* if the opium: the *quantity* consumed must have been considerably increasing. The vicious effect of opium-habit and of the use of various local preparations with opium, which produced so many wrecks of humanity, was not sufficiently realised. Even in 1893 the Opium Commission observed:—"the temperate use of opium in India should be viewed in the same light as the temperate use of alcohol in England. Opium is harmful, harmless, or even beneficial according to the measure and discretion with which it is used." This, they said, was the preponderate medical evidence before them. But whatever this evidence, publicists and social reformers have always held quite the opposite view. So far back as 1855, John Bright, speaking before the House of Parliament, exposed the immoral aspect of organised manufacture of opium, and ranged his attack on the profiteering trade in this article as practised in India.¹ It was no excuse that the bulk of the trade was with China and that the mischief was mainly amongst the people of a different country.

10. It is difficult to estimate the extent to which the use of opium increased in Bengal during the Company's administration. All the increase in the revenue from this source cannot be attributed merely to better management.

Its effect on local consumption.

¹ In concluding he said that he "would not go into the question of opium trade furthermore than to say that a more dreadful traffic or one more heinous in its results never existed, except perhaps in the transportation of Africans from their own country to the continent of America."

Since 1905, the universal public opinion is pronounced. A policy of progressive reduction of export of opium to China was adopted at this time: and



There was a definite impetus to increased production, and the output must have risen considerably. It cannot be doubted that this had its inevitable effect in increasing local consumption as well. Separate statistics began to be systematically collected much later, when a distinction was made between the revenue derived from "Provision Opium"¹ and "Excise Opium," the latter meaning opium consumed in the country. About the year 1902-03, the local consumption in Bengal (including Behar) and the United Provinces was as much as 1.3 seers per one thousand of the population.² To-day the consumption in Bengal is less than half a seer per 1000 of the population.

APPENDIX TO CHAPTER VIII

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO OPIUM

Lord Cornwallis

Regulation XXXII of 1793—Supply of opium to be secured through contract with a Contractor (for 4 years from Sept., 1793) who was to give delivery at the office of the Board of Trade at Calcutta, of specified quantities (6,400 factory maunds of Behar opium and 1,580 factory maunds of Bengal opium) and specified qualities (members

later under pressure from the League of Nations, the Government of India agreed to stop all exports of opium by the year 1935. It of course meant a heavy fall in the revenue from this source. This revenue in the whole of British India, was about 8 crores of rupees in 1913 : it fell to 3 crores in 1931, and now (1939-40) it is only Rs. 180 lakhs.

¹ The term "Provision Opium" owes its origin from the circumstance that, in the early days of the Government monopoly, opium was exported to China "to make provision for the Company's investment." *Imperial Gazetteer*, Vol. VI, p. 243.

² The highest was in Assam, where it was 8.8 seers per one thousand of the population : next was Bombay—2.4 seers. The lowest was in Madras—1.1 seers. *Imperial Gazetteer*, *ibid*, p. 244.

of the Hospital Board and a person appointed by the Board of Trade to judge): payment for excess supply at Rs. 25 per factory maund (each factory maund being 40 seers of $72\frac{2}{3}$ Sicca rupees for a seer), and penalty for short supply at Rs. 100 per factory maund.

With a view to prevent oppression on the raiyats who grew poppy, as well as to assist them in the working of the industry—this Regulation fixed the prices at which the raiyats must get payment: enjoined that no compulsion should be used and no penalty imposed on the raiyat for breach of contract “except in case of embezzlement”: provided for advances to the Contractor who would in turn advance money to the raiyats at the time of agreement with them: and also laid down that the zemindars must not realise enhanced rents from a raiyat for growing poppy on his land. The prices to be paid per seer to the raiyats were—Rs. 1-6-0 to Rs. 2-7-0 in the western districts of Subah Behar, Rs. 3 in Bhagalpur, Re. 1 to Rs. 1-4-0 in Purneah, and Rs. 2 to Rs. 2-8-0 in Rangpur area, including Cooch-Bihar. Penalty was provided for adulteration by raiyats: and levy of cesses from them in the name of *beeshy*, *mamuly*, etc., previously practised, was forbidden.

Penalty was provided for smuggling opium—this was confiscation and fine, etc., and for Europeans, sending them back to Europe.

The Contractor was not liable to the payment of any duties on the opium provided by him in Bengal or Behar: but for opium imported by him from the dominions of the Nawab Vizier, he was to pay a duty of $2\frac{1}{2}$ per cent. to the Raja of Benares, and another $2\frac{1}{2}$ per cent. on the article entering the Company's Provinces.

(Modified by Regulation VI of 1799 and subsequent Regulations on opium: wholly repealed by Act XIII of 1857.)

*Sir John Shore*

Regulation XXXII of 1795—introduced similar conditions as in Regulation XXXII of 1793, for contract for the provision of opium in Benares.

(Repealed by Regulation XIII of 1816 and Act XIII of 1857.)

Regulation LIII of 1795—With a view to stop illicit trade in opium, this Regulation provided for confiscation of “all the opium cloth known by the name of *cappah* and certain earthen vessels termed *dogah*, in which the crude opium collected from the poppy is deposited and which, from their porousness, absorb a part of the opium.” Also provided that persons cultivating poppy without advance from or agreement with the Contractor, must immediately inform the Contractor: penalty for failure to so intimate.

(Repealed by Act XIII of 1857.)

Lord Wellesley

Regulation VI of 1799—The revenue from opium “having considerably declined during the latter years of the late contracts for the provision of” opium, and with a view to “restoring and improving this important branch of the public resources,” this Regulation abolished the system of contracts, and in its place appointed an Opium Agent by a commission from the Governor-General in Council.

Opium Agent to work under the Board of Trade: to make annual settlements with the raiyats by advancing them money and stipulating the prices at which opium would be purchased from them: no compulsion to be used and no penalty except in case of wilful neglect or embezzlement by the raiyat: penalty for adulteration to be according to award by “two or more creditable

opium growers " to be appointed by the Agent or his officers,—objections to be adjudged by the *Dewany Adalat*.

Importation of opium from Oudh and territories not under the Company's administration, had been stopped previously : and this Regulation (section 16) declared that " all opium excepting that for which advances may be made by the Company, or sold by their authority, will be considered as contraband opium and shall be liable to seizure and confiscation " : provided for rewards to informers and made sundry rules to improve the administration by Opium Agents.

The provision in the Regulation of 1793 forbidding landholders from " exacting more from the raiyats on account of their poppy lands "—was repeated.

(Repealed by Regulations VI of 1809 and XIII of 1816.)

Regulation XLI of 1803—" Whereas it is essential to the success of the system established for obtaining a revenue from the opium provided in the Provinces of Behar and Benares,"—this Regulation prohibited cultivation of poppy in the provinces ceded by the Nawab Vizier and also illicit traffic in those provinces, as well as importation of opium from there into Bengal, Behar and Orissa : seizure, confiscation and fine for contravention. Importation of opium, the produce of any foreign country, in the Ceded Provinces was also forbidden on similar penalty. Boats, carriages, bullocks, etc., used in contraband traffic also liable to confiscation. Penalties imposed on cultivation, if not satisfied, to be enforced through the Judge of the *Dewany Adalat*. Rewards for informers.

Persons aggrieved by the acts of the Agents or the Board of Trade, might sue in the *Dewany Adalat* according to section 15 of Regulation II of 1803.

(Extended to the C. & C. Provinces by Reg. VIII of 1805 and repealed by Reg. XIII of 1816.)

Lord Minto (First)

Regulation V of 1807—provided for imprisonment up to 6 months for contravention of the rules in Reg. VI of 1799 regarding contraband opium.

(Repealed by Regulation XIII of 1816.)

Regulation VI of 1809—The provisions of Reg. VI of 1799 not having been found effectual, the special provisions in Regs. XXXI of 1793 and IX of 1803 for service or execution of law processes against growers, were extended to *dewans* and other officers and menials employed under the opium agents.

(Repealed by Reg. XIII of 1816.)

Lord Hastings

Regulation XIII of 1816—Consolidated into one Regulation the whole of the rules hitherto in force respecting this branch of the public revenue, and provided for improvements with the following objects :—

- (1) to establish an agency in Zilla Rangpur ;
- (2) to prevent illicit cultivation, sale or consumption of opium ;
- (3) to better regulate the internal sale, and for supplying the consumers with the drug in a pure and unadulterated state : and to limit the use of opium, as far as possible, to cases in which it may be necessary or salutary.

All landholders and their officers to give earliest information of illicit cultivation of poppy : penalty for default : simultaneous duties of the Police and *Abkari* Officers.

Repeated the previous declarations that “ all opium, excepting that which have been manufactured on account of the Government, or sold by their authority * * will be considered as contraband and liable to seizure and

confiscation with the boats, carriages, cattle and packages used in the storing or transport of it."

Retail sale restricted to licensed shops : form of *sanad* for such licence : penalty for sale by unlicensed persons.

The other provisions in previous Regulations, regarding advances to and agreement with raiyats, penalties, rewards to informers, procedure in case of contravention of rules, etc., were repeated with slight modification.

(Some provisions explained by Regulation XI of 1818 : modified by Regulations XI of 1818, VII of 1824 and wholly repealed by Acts XXI of 1856 and XIII of 1857.)

Regulation XVI of 1817—A duty of Rs. 24 per seer of eighty Calcutta *Sicca* weight, imposed on foreign opium, on importation by sea into any port within the territories of the Company. By "foreign opium" meant opium made in places out of the limits of the territories immediately dependent on the Presidency of Fort William.

(Repealed partially by Regulation XV of 1825 and wholly by Act XXIX of 1871.)

Regulation XI of 1818—raised the quantity of opium which foreign visitants might possess, to two seers : and of other persons, to two *tolahs* : sundry rules regarding rewards for seizure of contraband opium.

(Modified as regards rewards by Reg. VII of 1824, and repealed by Act XXI of 1856.)

Regulation VII of 1824—The penalties against persons illicitly cultivating poppy, extended to those who were directly or indirectly concerned or who encouraged or promoted such illicit cultivation. Judicial powers for the purpose extended to Opium Agents of Behar and Benares.

(Modified by Reg. VIII of 1826 and repealed by Acts XXI of 1856 and XIII of 1857.)

Lord Amherst

Regulation XV of 1825—which generally revised the rates of duties on all classes of articles, provided the following for opium :—

By sea into Calcutta or any Port or Place belonging to the Presidency of Fort William :—

Imported on British bottom—Rs. 24 a seer.

„ on Foreign „ —Rs. 48 „

Drawbacks on re-exports—*Nil*.

Exports by sea of local opium—

To Europe or U. S. America—duty *Nil*, whether on British or Foreign bottom : Drawback—*Nil*.

To other countries—duty *Nil*, whether on British or Foreign bottom. Drawback—when exported on British bottom— $7\frac{1}{2}$ p.c., and when on Foreign bottom—the amount of the Town duty.

Opium purchased at the Government sales was free from inland transit duty when carried into the interior.

(Repealed by Acts XIV of 1836, VI of 1863 and XVI of 1874.)

Regulation VIII of 1826—Defined “marketable opium” as opium having not more than one quarter of foreign matter in it : and “inferior opium” as having not more than one-half of foreign matter : opium with more than one-half foreign matter “shall be considered as useless.”

(Repealed by Act XXI of 1856.)

CHAPTER IX

ABKARI

It is generally believed that the ancient aboriginal people of India were much addicted to "drinking," and the Aryans when they migrated into north Punjab knew very well, and appreciated, the use of exhilarating liquor or wine,¹ almost as much as *uisge-beatha* (the water of life) of the Gaelic races in Europe. But Manu (1000 B.C.) deprecated the use of innoxiating liquor, and declared it a sin and an offence punishable by the King if "twice-born men" (the higher castes) drank such liquors even unknowingly.² "Since the spirit of rice is distilled from *mala* or filthy refuse of the grain, and since *mala* is also a name for sin, let no Brahmin, Khatriya or Vaisya drink that spirit." (Manu, Chap. XI, 94.) The *Yakhas*, *Rakhasas* and *Pisachas* (the aboriginal Indians) only took such liquor and other narcotic drugs (Chap. XI, 96).

2. Kautilya's *Arthasastra*³ (300 B.C.) has a whole Chapter on the subject of the vending of liquor. There

¹ The inquisitive reader may refer to Dr. Rajendra Lala Mitra's paper on this subject published in the Asiatic Society's Journal, 1873, Vol. XLIII, Part I.

² Manu, Chapter XI, 91-99. Also verse 67 which forbids even smelling of liquor. In Chapter IX (v. 235), a soldier or merchant drinking *arak*, or a priest drinking *arak*, mead or rum, is placed in the same category as a slayer of a priest. Whether all these statements represented what was the actual practice of the Kings or was only an idealism of a Puritan class of reformers, is a matter of speculation only.

³ See translation by Shamasastri, Bangalore Government Press, 1915.

The varieties of liquors (and their preparations) are described as—(1) *Modaka* (from *arak* of rice) : (2) *Prasanna* (from *arak* of flower and a kind of ferment mixed with spices and fruits of a kind of tree called *putraka*, mainly found in Kamrup) : (3) *Asava* from *Kapitha* (*feromia elephantum*), fermented sugar and honey : (4)

was a Superintendent whose duty was to "carry on liquor-traffic not only in forts and country parts, but also in camps": but the same paragraph continues—"Liquor shall not be taken out of villages, nor shall liquor shops be close to each other. Lest workmen spoil the work in hand, and *Aryas* violate their decency and virtuous character, and lest fire-brands commit indiscreet acts, liquor shall be sold to persons of well known character in small quantities * * * *. Those who are well known and of pure character may take liquor out of shop." Excellent sentiments no doubt; and for the privacy and comfort of those who would drink in the shops, it was enjoined that liquor shops must "contain many rooms provided with beds and seats kept apart: the drinking room shall contain scents, garlands of flowers, water and other comfortable things suitable to varying seasons." And it was further enjoined that "when customers under intoxication lose any of their things, the merchants of the shop shall not only make good the loss, but also pay an equivalent fine." There was a duty to be paid by the vendors—"Those who deal with liquor (other than that of the King) shall pay five per cent. as toll."

3. In Bangadesh the prevalence, and later revival,¹ of *Tantric* rites in baser form, must have induced extensive and intensive use of intoxicating liquor and narcotic drugs in various forms of preparation.

—in *Arthashastra*
Influence of *Tan-*
tric practices.

Arista—medicinal preparation by physicians: (5) *Maireya*—from the bark of a narcotic plant *meshasringi* mixed with jaggery, etc.: (6) *Madhu*—from the juice of grapes. Mixed varieties are also mentioned, e.g., decoction of *madhuka* mixed with granulated sugar when added to *prasanna* gave a variety of pleasing odour. Mention is made also of liquor manufactured from mango fruits.

¹ For the interval, Buddhist works stringently prohibited the use of liquor.

4. The teachings of the Prophet forbade the use of intoxicating liquor by the followers of Islam : and although the habit of drinking still persisted amongst the non-Moslems and the less orthodox amongst the Muhammadans, a revulsion of feeling must have been growing. The preachings of Chaitanya which captivated the minds of millions in Bangadesh, had also a great moral effect : and it may be said that by the time the British came, the evil of drinking was much less prevalent in the country than what it was in the earlier periods.

Influence of Islam
and of Chaitanya-
ism.

5. During the Mughal period, manufacture and vending of intoxicating liquor and narcotic drugs, formed an item of taxation under the head *Abkari*.¹ Whatever might have been the method of the administration of *Abkari* in other parts of Hindustan, in Bengal, at any rate during the latter period of Mughal rule, there was no uniform system of levy all through the Subah. We find mention of an officer called *Muhtasib*, who dealt with cases of drunkenness and vending of spirituous liquor and intoxicating drugs, but his function was confined to the capital city

Abkari during the
Mughal period.

¹ From Persian " ab " = water and " kari " = manufacture. *Abkari* as an item of taxation, included intoxicating drugs, and even tobacco and betelnut. There is no mention of " *Abkari* " as an item of taxation, in *Ayeeen i-Akbari* (1603 A.D.) and the following passage occurs amongst the duties of the town *Kotwal* :—" He shall prohibit smoking, drinking, selling and buying of spirituous liquors : but need not take pains to discover what men do in secret". Mention is made of wine-vineger and sugar-vineger, and in one place it is said—" Whenever His Majesty is inclined to drink wine or take opium or *Kukuar*, trays of fruit are set before him."

There were probably some rules of prohibition during Emperor Auranzzeb's time, in and near the capital city. M. Manouchi, the Venetian physician in his Court, writes :—" At this time under Auranzzeb, a zealous observer of Alkoran, the principal function of the Civil Judge is to suppress drunkenness, exterminate taverns, and generally all places of debauchery : to punish those who distil *orah*, which is a kind of strong water extracted from sugar."

of Murshidabad and its suburbs.¹ Here, the *Abkari* collection might have been leased out² to selected persons, but in the interior this levy, like other items of *Sayer*,³ was entrusted to the zemindars and accounted for by them in their revenue accounts. Grant does not give any separate figure for *Abkari* either in his account of zemindari *Sayer* or in the account of *Sayer Chunakahly*. From the references in the earlier Regulations, it would seem that there were three varieties of intoxicating liquor, viz.,—(1) liquor from molasses or sugar and, in the hilly areas on the west, *mahua* flower : (2) *tari* or toddy from palm-tree or cocoanut tree juice : and (3) *pachwai* from fermented rice, which was the common beverage, and almost a food with certain aboriginal people.

6. The mixed system of *Abkari* administration which obtained at the time the Company acquired the *Dewany*, was continued for some years. In 1790,⁴ the authority of the zemindars to levy and collect the *Abkari* duty in the interior was taken away, along with their authority with regard to *Sayer* of all kinds, and this authority was assumed by the Company direct. It is thus sometimes called “resumption of *Abkari*.” A uniform set of rules was promulgated in that year, and these were later incorporated in Regulation XXXIV of 1793. These rules declared in the first place that “no tax shall be levied on

General system
regarding country
spirit during the
Regulation period.

¹ Field, Introduction to Bengal Regulations. The various items of “*Sayer Chunakhaly*” mentioned by Grant in his Analysis, including duty on exports of raw silk, taxes on shops and licences for vending liquor, which was collected direct, relate to levies “in or about the city of Murshidabad.”

² This probably was the general system in *Subhas* round and near the capital city of Delhi, during the best regulated period of Mughal rule before its breakdown commenced. See Imperial Gazetteer, Vol. IV, p. 254.

³ The main items of this *Sayer* in zemindaries, were the inland transit duty, and taxes on shops and bazars.

⁴ Certain amount of control over *Abkari* was attempted by Warren Hastings in 1782 : but it was not effective.

the manufacture and sale of spirituous liquors except on the part of Government." Next, the manufacture and sale were restricted to specified towns and villages and to only licensed individuals. Certain daily rates of duty, varying per still (each still to have capacity of not more than 50 seers) were also laid down. These rates were six annas, 12 annas and Re. 1-4 according to the class of the locality. There was thus one levy both for manufacture and sale, and liquor could be sold only at the place of its manufactory. In 1800 (Reg. VI) a separate levy was adopted for sale, and there might be sales by licensed vendors at places away from the manufactory. The duty for sale was Re. 1 per diem in the large cities, and in other places, 12 annas, 8 annas and 4 annas per diem.

7. This was the general plan till 1813. Regulation X of this year (which repealed practically all the previous Regulations) introduced the system of "*Sadar* Distillery," i.e., a large scale distillery (presumably run by a good capitalist, from whom revenue could also be realised with a certainty) at the district headquarters, from where liquor would be issued ¹ for sale in the interior. Smaller distilleries in the interior where consumption was high, were not however forbidden, provided they were not within 8 miles of a *Sadar* Distillery. No rates were, however, fixed in the Regulation either for the distillery or for the vending, but it was laid down that the Board of Revenue, and the Board of Commissioners,² should fix such "highest rates of duty" as would not give "rise to the illicit manufacture or sale of spirits." Regulation X of 1813 consolidated also the other provisions in previous Regulations relative to executive and judicial measures for punishing illicit manufacture or sale and for rewards to informers.

¹ A restriction was put on the strength of the liquor to be issued. It was not to exceed 25 per cent. below London proof.

² In the Ceded and Conquered Provinces.

One curious provision in these Regulations was that the Collectors were to receive a commission of certain percentage on the *Abkari* collections made by them, in addition to their usual salaries.

All licences whether for manufacture or for sale, were subjected to a stamp-duty (not inconsiderable) by Regulation X of 1797. This impost was continued till 1812, when by Regulation XIII of that year, it was replaced by a levy of a sum equal to ten days' tax.

8. The general plan of *Abkari* administration outlined above, was continued throughout the Regulation period, except that long term leases, not exceeding 5 years, of the duties leviable on the manufacture and sale of spirituous liquor (also *tari*, *pachwai* and drugs) were introduced in 1824 (Reg. VII). This system of "farming" might have the effect of relaxing the control over the actual retail sellers, but it ensured the regular collection of the Government due. Simultaneously, *Abkari Darogas* were appointed to assist the Collectors in the detailed supervision of the retail shops.

9. In the meantime, and not long after the Regulation of 1793, another development in the manufacture of spirituous liquor had commenced. The Country Stills produced liquor by crude methods: and some Europeans started distilleries run on the English method with wash-stills, coppers, tunns, butts, coolers and vessels, in the vicinity of the city of Calcutta. The liquor produced was of a more refined sort, and was introduced mainly for the purpose of exportation; and this method of investment of capital seems to have received considerable encouragement from the authorities. By Section 33 of Regulation VI of 1800, distilleries of rum, *arak* and other varieties

Stamp-duty on
licences.

Farming of *Abkari*,
1824.

Distilleries on
European method.
1800-02.

of spirits conducted by Europeans or the descendants of Europeans, for the purpose of exportation and not for retail sale in the country, were exempted from the *Abkari* tax. But this preference to exportation, was removed in 1802, and by Regulation II of that year a duty of 6 annas per gallon London proof, for such manufacture, was imposed. A drawback of a moiety of the duty, *i.e.*, 3 annas per gallon, was allowed when the product was exported by sea. For retail sale in the country, a further duty at the rate of 4 annas and 3 annas was charged.

10. *Tari* (corruption—"toddy") produced from the sap of palmyra, date-palm and cocoanut palm, and intoxicating drugs, as *bhang*, *ganja*, etc., were also articles of *Abkari* duty in the Regulation of 1793. *Pachwai* or a beverage brewed from rice or millet, and which was almost a food with certain aboriginal people, was not made a subject of taxation till 1811.

It is not probable that the levy on *tari* which was obtained from trees which grew so scattered all over the country, could have ever been enforced with any regularity, or that the revenue from it could have been considerable. The plan outlined in Regulation XXXIV of 1793 was that *passis* or extractors of the sap were to pay a tax of 25 per cent. of the rent they paid to the owners of the trees, and obtain a licence : and for selling, they were to pay at rates varying from eight annas to one rupee per month. Each licence (covering a period of one year) also required stamp-duty at rates from Rs. 2 to Rs. 10. Apart from the general difficulty of enforcing any such plan, special difficulty was felt with regard to unfermented juice, particularly of date-palm. Regulation I of 1808 dealt with this aspect of the levy, with regard to the districts in the Provinces of Behar and Benares. In the same year the toddy-tax was also

Tax on other
kinds of intoxicants.

Tari and
Pachwai.

extended to the Ceded and Conquered Provinces and Bundelcund (Reg. III). The system of long term leases of *Abkari* dues, introduced in 1824 (Regulation VII) applied also to *tari*. The general rules of licence of *Pachwai*, were also similar (Reg. V of 1811), but the rates were slightly lower than those for *tari*, and of course there could be no levy on any rent paid to any body.

Regarding intoxicating drugs as *bhang*, *ganja*, etc., the authorities apparently felt difficulties in tackling the production of these drugs, with precise rules. Regulation XXXIV of 1793 thus left the levy generally to the discretion of the Board of Revenue. Later on, Regulation VI of 1800 explained that these drugs included what were locally called *ganja*, *bhang* or *subjee*, *majoom*, *banker*, etc., and restricted their sales only to such towns and villages as would be specified by the Board of Revenue. An annual licence from the Collectors was also required. But in the absence of any central or licensed issuing "manufactory," there could not be any very effective control, and "informers" about whom there is frequent mention in the Regulations, thus played an important rôle.

11. As has already been observed, *Abkari* was an item of *Sayer* during the Mughal period, and formed a part of the revenue derived under that head. Immediately before the acquisition of *Dewany*, the total of all *Sayer* revenue was about Rs. 9 lakhs : and *Abkari* probably did not exceed 3 or 4 lakhs.¹ But during the Company's administration, it rose steadily, and between the years 1828 and 1833 it ranged between 15 to 20 lakhs a year : and in 1857-58 it was as much as £794,244 or about 80 lakhs of rupees. The latter twenty-four years, thus showed a tremendous

Grant in his Analysis does not give any separate figure for *Abkari*.

rise, even allowing that the last figure included receipts from other Provinces.

12. These figures have led to many strong criticisms about the *Abkari* policy during the Company's administration. Any idea of "prohibition,"¹ even partial, was of course unknown in those days: and except so far as followed from strict enforcement of the duties levied, which naturally increased the prices, there was no overt act to reduce consumption. The sites selected for shops were avowedly places where there was a chance of large sales, while the measures taken for large-scale production at *Sadar* Distilleries, showed a desire to keep supply alongside the demand. The system of leases by auction to the highest bidder also offered direct incentive to the lessees towards increased consumption, and they had long terms as 3, 4, or 5 years to work their plans. Nonetheless was the special attraction offered to the Collectors, of a commission on the duty collected: the larger the sales, the larger was the duty and larger the commission. All these are true: but at the same time it cannot be overlooked that for about half a century before the commencement of the Company's administration, Bengal was in a state of semi-anarchy, impoverished and reduced in population. Even the zemindars and other landholding classes, forming the richer section of the people, were in great distress. *Abkari* was not a branch of public

¹ A crusade against liquor started in America after the Civil War: and the first legislation for "prohibition" was adopted in the State of Maine in 1851. Temperance Unions were started, and several other States followed Maine. In 1919 the National Congress of the United States adopted what is known as the Eighteenth Amendment, declaring the whole country as a "dry" territory. Illicit manufacture and traffic and other evils followed, and eventually in 1933 the Eighteenth Amendment was repealed. In Russia *Vodka* was once prohibited by the Czar, but after the Revolution the Soviet authorities restored it, making the traffic a State monopoly. Temporary prohibition was adopted in Canada about 1916, but now inordinate drinking is restricted by strict Government regulations.

revenue which could flourish under such circumstances : and if we judge from the conditions which developed with the establishment of law and order, and rapid improvement of economic conditions which followed particularly after 1793, and take with them the systematised efforts made to prevent illicit traffic and to bring into account all manufactures wherever they were carried on, openly or secretly, the increase in revenue, at any rate during the Regulation period, would not seem to be so extraordinary as to justify an aspersion that the Company were solicitous only for their revenue. In their very first Regulation (XXXIV of 1793), it was observed that the proceedings of criminal courts had evinced that many crimes and disorders were ascribable to a great measure to immoderate use of liquors and drugs, particularly amongst the lower orders of the people : and the Preamble recited that the main object of the rules in the Regulation was to impose restrictions on the manufacture and vending of these articles with a view to check such crimes and disorders. Regulation XL of 1803 which extended the *Abkari* rules to the Ceded Provinces repeated similar sentiment, *viz.*, that immoderate use of liquors and drugs was "equally prejudicial to the health and morals of the people and to the peace and good order of society." The recitals in this and other Regulations indicate that illicit manufacture and sale was very extensive owing to absence of any system of restriction or control. "Improvement of public resources " from this source was stated as an object, only in Regulation II of 1802¹ in connection with distilleries worked according to the English method. Judged from these assertions it is difficult to say that the authorities were unmindful of the moral and social aspect of the problem. *Abkari* revenue showed extraordinary rise

¹ In striking contrast, expressions like "increasing the revenue," are repeated *ad nauseam* in the Regulations relating to Opium.

some time after the close of the Regulation period : and it is also a notorious fact that from about the middle of the last century drinking habit became very extensive amongst all classes of people in Bengal. It became a fashion even with the cultured people, and many a genius like Michael Madhusudan Dutt, were its victims. It was at this time that the theory of " maximum revenue with minimum of consumption," developed. A revulsion of feeling came over early in the beginning of the present century : and although the extreme view of total prohibition had not been adopted, Bengal could boast that in 1935-36 it was the most " temperate " of all Provinces in India. The number of excise shops was only one per 100 sq. miles, and if the industrial areas were excluded, the average was not more than one per 200 sq. miles. The liquor mostly in use was of very low strength, 60 or 75 u.p.

APPENDIX TO CHAPTER IX

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO *Abkari*

Lord Cornwallis

Regulation XXXIV of 1793—codified the rules of 16th April, 1790, to control the manufacture and sale of intoxicating liquors and drugs. The object, as stated in the Preamble, was twofold, *viz.*,—(1) to prevent perpetration of crimes many of which were believed to be due to immoderate use of such liquor or drug, the cost of manufacture and price being inconsiderable : and (2) to augment the public revenue.

Section 3 referred to the resumption of *Abkari* collections by Government on 16th April, 1790, and declared

that—"no tax shall be levied on the manufacture or sale of spirituous liquors except on the part of Government," and laid down that any person having claims to deductions or compensation on account of this resumption, might apply to the Board of Revenue for the orders of the Governor-General in Council : but that no suits were to lie in the Courts of Judicature.

The Regulation prohibited also the manufacture of spirituous liquors except under a licence (annual) from the Collector. The manufacture and sale were confined to certain towns and villages in each Zilla, and daily rates of tax were fixed varying as 6 annas, 12 annas and Re. 1-4 per still according to the class of the town or village. The prices in the larger cities were thus higher ; and Section 8 of the Regulation prohibited establishment of cheaper stills in the neighbourhood of the cities of Patna, Dacca and Murshidabad so as to prevent underselling those residing in the cities. Another object was to facilitate Police work to control disorderly persons. Stills were also forbidden within 2 *kose* of the military cantonments of Barrackpore, Berhampore and Dinapore.

Toddy or *tari* (from palm-tree) was separately treated, and a tax of 25 per cent. on the amount of the rents specified in the *pattas* granted by proprietors of the toddy trees to *passis* or extractors of toddy, was imposed. Penalty was imposed on the proprietors for collusion in the *pattas*.

For *bhang*, *ganja* and other intoxicating drugs, a tax to be fixed annually by the Board of Revenue with the sanction of the Governor-General in Council, was imposed : and sale of such drugs without a licence from the Collector was forbidden.

A penalty of fine was provided for illicit manufacture or vending of intoxicating liquors or drugs. (Partly repealed by Regulations LI of 1798, XX of 1806 and I of 1808, and wholly by Regulation X of 1813.)

Sir John Shore

Regulation LI of 1793—passed 7 months later, reduced the penalty and provided for imprisonment or other coercive measure for the realisation of the penalty, through the Judge of the district.

(Repealed by Regulation X of 1813.)

Regulation I of 1794—dealt with the subject of penalty, and provided rules for rewards to informers. Also enjoined the duty of apprehension to *Darogahs*.

(Whole repealed by Reg. X of 1813.)

Regulation XLVII of 1795—extended the rules of Reg. XXXIV of 1793 to the Province of Benares : prohibiting also establishment of stills within two *cose* of the military station of Chunar.

(Whole repealed by Reg. X of 1813.)

Regulation VII of 1797—power to increase the still-duty.

(Repealed by Reg. X of 1813.)

Regulation X of 1797—For the “improvement of the public resources,”—this Regulation imposed a further tax (in addition to the still-duty) by requiring stamped paper for every licence of values of Rs. 50, 40, 25, 15, 10, and 5 for stills paying Rs. 5, Rs. 4, Rs. 2-8, Rs. 1-4, 12 annas and 6 annas *pere diem* respectively. Also subjected to *rowana* stamp-duty.

(Partially repealed by Regs. VII of 1800 and VII of 1809 and wholly by Reg. I of 1814.)

Lord Wellesley

Regulation VI of 1800—Expanded the previous rules regarding sale of intoxicating drugs such as *ganja*, *bhang* or *subjee*, *majoom*, *banker*, etc., and restricted their sales at specified towns and villages (to be determined by the Board of Revenue), and imposed a licence fee of

Re. 1, 12 annas, 8 annas and 4 annas, per diem according to the class of the place selected. A further stamp-tax on each licence varying from Rs. 10 in cities and Rs. 2 to 6 in villages.

Toddy explained as the juice of *tar* (palm), *khajur* (date-palm) and *nareal* (cocoanut) trees. The tax of 25 per cent. on the rents for tapping imposed by Regulation XXXIV of 1793 was retained : but persons whether the tappers themselves or others were subjected also to a monthly licence-fee for selling the same. The licence-fee varied from 8 annas to Re. 1 in town, and in village it was 4 annas. Each licence required also stamped paper of value Rs. 2 in the case of village-licence, and in the case of town licences Rs. 4 to Rs. 10.

The licences under this Regulation were to be for the year.

Power given to the Board of Revenue to raise the rate of a particular place, but not so as to exceed the maximum laid down : and to select sites in consultation with the Magistrate.

Provisions of penalty for illicit manufacture or sale further expanded : power given to the Magistrate to destroy unlicensed stills : Police officer to exercise vigilance and take action.

No country-still permitted within the town of Calcutta : but Justices of the Peace might permit on the outskirts for sale in the town, on payment of such rate of duty as they might prescribe.

Similarly the authorities of cantonments might permit stills or sale "to prevent the soldiers from staying into the country in search of liquor," but the usual taxes and licence fees were to be paid.

Section 33 of this Regulation laid down :—"The distillers of rum, *arak* and other spirits conducted by Europeans, or the descendants of Europeans, the produce

of which is intended for exportation and not for retail sale in the country, are also declared to be exempted from the tax ordered to be levied on the manufacture and retail sale of spirits by this and former Regulations." They were, however, required to take out a licence (no fee prescribed for it) from the Board of Revenue.

"As an encouragement to the diligent and active discharge of this trust," Collectors were allowed a commission of 5 per cent. on the first Rs. 50 collected by them and $2\frac{1}{2}$ per cent. for the remainder, in a year.

(Partly repealed by Regulations I of 1808 and XX of 1806, and wholly by Regulation X of 1813.)

Regulation II of 1802—Related to "spirits manufactured at distilleries constructed and worked according to the European manner," and "with a view to the improvement of public resources,"—imposed a duty of 6 annas per gallon London proof, on all spirits so manufactured to be paid by the proprietors to the Justices of the Peace (these distilleries being in Calcutta or adjacent places in the 24-Parganas district): such distilleries forbidden without a licence: distillers to furnish true and correct accounts of their turn-out: penalties for infringement: scales of reward for informers.

Persons exporting such spirits were entitled to a drawback of a moiety of the duty paid by themselves at the place of manufacture, *i.e.*, at 3 annas per gallon: but no spirits were to be deemed as intended for exportation, unless the quantity was 1,000 gallons or upwards.

For retail sale of such spirits—(1) when within the town of Calcutta—subject to 33 Geo. III, Chap. 52, Section 159: (2) outside the town of Calcutta—on licence with duty at the rate of 4 annas and 3 annas per gallon.

(Partially repealed by Regulations X of 1808 and X of 1813, and Act XI of 1849: wholly by Act XXI of 1856.)

Regulation XL of 1803—extended the provisions of the previous Regulations, in a consolidated form, to the Provinces ceded by the Nawab Vizier.

An important observation in the Preamble was that these restrictions were necessary because “immediate use of spirituous liquors and intoxicating drugs” were “equally prejudicial to the health and morals of the people and to the peace and good order of society.”

(Repealed by Regulations XX of 1806 and X of 1813.)

Regulation VIII of 1805—extended Reg. XL of 1803 to the Ceded and Conquered Provinces, and provided for security from licensed vendors and manufacturers.

(Repealed by Reg. X of 1813.)

Sir George Barlow

Regulation XIX of 1806—owing to constant fluctuations in the market prices of spirits, the previous Regulations (XI of 1800 and XXXIX of 1795) regarding valuation of spirits imported by sea, were modified, and the rate of duty ($3\frac{1}{2}$ per cent.) was directed to be calculated at 30 pounds sterling per pipe. The rate for Batavia *arak* was Rs. 55 per leaguer.

(Repealed by Regulation IX of 1810.)

Regulation XX of 1806—modified the rates regarding sale of spirituous liquors in the vicinity of military cantonments.

(Repealed by Regulation X of 1813.)

Lord Minto (First)

Regulation I of 1808—special for the Provinces of Behar and Benares—duty for sale of toddy under Sec. II of Reg. VI of 1800, to be levied whether it was sold in a fermented or unfermented state, the *passis* only being exempted when they themselves sold.

(Repealed by Regulation X of 1813.)

Regulation III of 1808—extended generally the previous Regulations regarding retail of toddy, to the Ceded and Conquered Provinces and Bundelcund.

(Repealed by Regulation X of 1813.)

Regulation V of 1811—related to *Pachwai* and provided that the Regulations about licence, etc., for vending liquor were to apply to *Pachwai*, slightly lower rates, however, being laid down in case of this beverage.

(Repealed by Act X of 1813.)

Regulation XIII of 1812—stamped paper for licences, abolished; and in its place a levy of a sum equal to ten days tax was imposed.

(Repealed by Regulation X of 1813.)

Lord Hastings

Regulation X of 1813—Made into one Regulation the provisions in the previous Regulations, with modifications so as to provide for—(1) limiting country distilleries at first to the vicinity of cities or towns at which the Collector resided, and eventually to other places: (2) control of *Abkari* by the Collectors: and (3) distillation according to European process at places situated at a distance from Calcutta.

The “*Sadar* Distilleries” were placed in immediate charge of a native Superintendent or *Darogah*: Collectors to “adjust with the vendors, the number of gallons which they shall respectively receive each day from the distillery:” system of passes for vendors introduced.

Other provisions for licence to vendors of toddy, *pachwai*, or intoxicating drugs, were repeated and consolidated.

(Extended for Opium by Reg. XIII of 1816: Repealed by Regulations XIII of 1816 and VII of 1824, and Acts XXV of 1840 and XXI of 1856.)

Regulation XVII of 1814—Experienced Collectors to enforce arrears without resorting to the Civil Court.

(Extended for Opium by Regulation XIII of 1816 : Repealed by Act XXI of 1856.)

Lord Amherst

Regulation VII of 1824—To remove doubts which had arisen, this Regulation made it clear that the rules in the previous Regulations applied to the retail sale of liquors whether imported by sea or land, or manufactured in this country by whatever process. So also as regards drawbacks for exports (Regulation II of 1802). Prohibited British-born subjects from working stills beyond 10 miles of Calcutta.

Provided also for leases of the duties leviable on the manufacture and sale of spirituous or fermented liquors, *tari* and *pachwai*, and of intoxicating drugs, for such periods as might be ordered by the Board of Revenue : but not to be for more than 5 years without the sanction of the Governor-General in Council.

Prohibited foreign spirits or spirits manufactured in this country according to the European process, to be carried on transit without Pass, except for private consumption.

Charas treated in the same category as *ganja*.

(Repealed by Acts XXI of 1856 and XIII of 1857.)

Lord William Bentinck

Regulation X of 1833—related to the Prince of Wales, Island, Singapur and Malacca, fixing the minimum quantities for retailing wine or spirituous liquors within those places, without paying the prescribed duty to the Renter or person duly licensed by Government : rate Rs. 50 per gallon or 50 pice per quart bottle.

(Repealed by Act XIV of 1851.)

CHAPTER X

STAMP-DUTIES

Fees on complaints and petitions, etc., during trial of suits seem to have been first levied in 1795. The Preamble to Regulation XXXVIII of 1795, by which this levy was introduced, explained the reason thus :—

“ No expense attending the institution of suits¹ in the first instance * * * and no fees whatever being charged on the exhibits and papers filed in the Courts, nor on petitions presented to the Courts * * * many groundless and litigious suits and complaints have been instituted against individuals, and the trials of others have been protracted by the filing of superfluous exhibits, or the summoning of witnesses whose testimony was not necessary to the development of the merits of the case.”

2. The plan of the Regulation was to levy a uniform rate of one anna per rupee, *ad valorem*, for suits up to a value of Rs. 50 and then reduced rate of half anna, up to suits of value Rs. 200, and thereafter gradually reduced percentages from three to a quarter per cent. as the value was higher. The same rates applied for petitions of appeal also.

¹ A Regulation dated 21st August, 1772, mentions the practice of levying *chauth* (one-fourth), *dasatra* (one-tenth) and *pachattr* (one-fifth), as fee or commission occasionally levied. These were abolished by this Regulation, and up till 1795, there were no authorised institution-fees.

3. For petitions after institution, which appear to include defendant's answer or reply, there were also different rates according as the suits—(a) had value less than Rs. 200, (b) had value above Rs. 200, but were not appealable to the *Sadar Dewany Adalat*, and (c) were appealable to the *Sadar Dewany Adalat*. The rates were, in case (a), four annas; in case (b), eight annas; and in case (c), one rupee. The same rates applied for every exhibit and for every witness summoned.

4. All these kinds of fees were realised in cash : and it was not till 1797 that levy of the latter kind, *i.e.*, other than on plaint, was directed to be realised in stamp as a stamp-duty like similar duty then introduced for private documents of certain descriptions. The levy of the fee on plaints, called "institution-fees", continued to be realised in cash¹, till 1814.

5. Regulation VI of 1797 first introduced a stamp-duty on private documents such as original bonds (*tamasooks*), promissory notes (*teeps*) or other written obligations.² It was a new method of taxation not previously known in this country, and was apparently an imitation of the system which had been introduced in England much earlier.³ *Rowanas* or passes for transit of goods as well as *Abkari*-licences were also subjected to stamp-duty.

¹ The institution-fee thus realised by the Native Commissioners with powers of *Munsifs* was the remuneration for themselves and their staff, and they thus appropriated the sum directly, till the system of monthly salary was introduced for them. So also for *Sadar Amcens*. See Chapter IV *ante*.

² Bills of exchange (*hoondis*) and obligations of value of Rs. 50/- and less were excepted.

³ This mode of taxation is believed to have its origin from the Dutch, who had adopted it as early as 1624 as a tax which would press lightly upon the people

This Regulation also directed that the fees on petitions, etc., filed in Courts, *vide* paragraph 3 above, as well as for copies of papers from Courts or public offices as those of the Collectors and the Board of Revenue, should be paid in stamped paper of equivalent values.

6. The rates of stamp-duty levied on private documentary transactions, under Regulation VI of 1797, were moderate. For obligations, etc., of values between Rs. 50 and 100, the rate was four annas, between Rs. 100 and Rs. 1,000, eight annas, and above Rs. 1000—one rupee. The rates for petitions, etc., in Courts mentioned in paragraph 3, were however doubled. As regards institution-fees, the mode of levying continued, however, to be by cash payment.

7. Regulation VII of 1800 revised the rates of stamp-duty on private documentary transactions; and generally the previous rates were considerably increased.¹ They were further increased by Regulation XVI of 1824. The other Regulations on the subject mentioned in the Synopsis, aimed mainly at filling up omissions and making better provision for the supply and sale of stamped papers. All these were consolidated in Regulation X of 1829 which remained the main law on stamp-duty till the end of the Regulation period of the Company's administration.

and yet yield a considerable revenue to Government. It was introduced in England in 1694, by Act 5 Wm. & Mary, C. 21.

¹ One reason stated, for this increase was that it was necessary to make up the deficiency in the public revenue occasioned by the abolition of the Police tax "for which purpose the stamp-duties in Regulation VI of 1897, were partly established."

Regulation I of 1814 introduced stamp also for the payment of the fees for institution of suits ;¹ but a different method of calculation was adopted, with the result that the rates were considerably increased. The revised rates were, however, not much altered during the Regulation period, and Regulation X of 1829, which consolidated all the various levies as stamp-duty, incorporated in a Table (Table B) practically the same rates.

Institution-fees
in stamp at in-
creased rates, 1814.

8. An important Regulation (Reg. XII) was passed in 1826, by which under the authority derived from sections 98 and 99 of Act 53 Geo III, Cap. 155, these stamp-duties were extended to Calcutta.

Stamp-duty
Calcutta, 1826.

9. Regulation VI of 1797 established a central Stamp Office at Calcutta in charge of an officer (under the Board of Revenue) called "Superintendent of the Stamps." The stamps indicating different values, were to be cut at the Calcutta Mint, and impressed on a special kind of paper : and as regards supply it was provided that the Superintendent was not to issue any stamped paper except on requisition from the Courts, Boards or Officers expressly authorised to make such requisition. These authorities were then required to distribute the stamped papers amongst the *Kazis* and others for sale. The arrangement was vague and necessarily involved accounting complications : and in 1800 (Regulation VII) the Collectors in the districts were made responsible, on stipulation that they would receive for their own perquisites and for distribution amongst the agents or vendors they would employ,

Established a
Central Stamp
Office : method of
supply in the
interior.

¹ One reason given for this change was that there were reasons to believe that considerable abuses were committed by officers in collecting and bringing into account these fees.

a commission at the rate of ten per cent. of the values of the papers. Regulation XIII of 1806 next provided for *sanads* to the persons so appointed as vendors, and laid down their duties and obligations. Several Regulations passed later on, elaborated these duties and obligations, with penalties for default on the part of licensed vendors. An officer called "Stamp *Daroga*" was also appointed to watch and control.

10. It has been noticed that Regulation VI of 1797 provided that the dies for the stamps would be cut at the Calcutta Mint, and that the kind of paper to be used, would be prescribed by the Governor-General in Council. The object was, of course, to prevent imitation or forgery. Three sizes of paper were prescribed later, and it was enjoined that all original documents must be written on such paper, otherwise they would not be admissible in evidence (Regulation VII of 1800). More stringent rules were laid down in 1806 (Regulation XIII) which required that every stamped paper should be endorsed by the Superintendent of Stamps with his signature, before issue : and further that all stamped paper sold should be endorsed as "sold", by the vendor over his signature. Regulation I of 1814 laid down that only one set of stamps, for all purposes, should be issued with the values inscribed in the English, Persian, Bengalee and Nagree characters : and also that ordinary paper of the manufacture of Bengal and Behar would be used, except for copies of proceedings and judgments of the Court of *Sadar Dewany Adalat* in appeals to His Majesty in Council, in which cases such copies would be made on paper of European manufacture. An interesting provision in this Regulation was that the Superintendent was always to "keep in deposit a sufficient supply of the leaf of the *tár* (palm tree) duly stamped, for the use of those districts in which that material is

Dies and other
authentication for
stamps.

ordinarily used for the execution of certain documents." It also provided that when a person desired to have his document on vellum or parchment, he might get such paper to be stamped with the die of the required value.

11. A material innovation was introduced in 1824.

Under Regulation XVI of this year stamps of high values¹ were required to be "impressed on paper specially manufactured in Europe for that purpose, bearing in watermark the device of the East India Company's arms, with the following words in addition to the ordinary legend of the said arms, that is to say, the words 'Government Stamp' in English and corresponding words in the Bengalee language and character, and in the Hindusthanee language and Nagree character, and the words 'Ulamut Hukoomut Kumpanee' in the Persian character."

12. When the stamp-duty was extended to Calcutta in 1826 (Regulation XII), it was laid down that two kinds of stamps were to be used, each specifying in English, Persian and Bengalee character, the sum charged : one to be affixed at the stamp office and bearing besides the value, the words "Stamp Office" in the English character, with the prescribed device or legend, and the other a counter-stamp at the general treasury, bearing, besides the value, also the words "General Treasury" in English. This plan was adopted for all stamps by the consolidating Regulation X of 1829, only the counter-stamp might be also of such other issue office as the Board might authorise.

13. The receipts from stamp-duty in Bengal in the first year after its introduction in 1797, amounted to about Rs. 20,000 : but they rose steadily and, as a further result of the increase in the rate by Regulation VII of 1800

¹ Probably of all values above 8 annas, though it is not very clearly stated.

(passed in April that year), the receipts during 1800-01 amounted to over 3½ lakhs of rupees. The rise between 1801 to 1814 was due to improvements in general conditions; but with the revision made in 1814 and inclusion of institution-fees as stamp-duties, there was a sudden rise which by 1820-21 gave a total receipt under this head of over 21 lakhs of rupees: and by the close of the Regulation period of the Company's administration it was over 30½ lakhs, or about 2.6 per cent. of the total revenue of that time.

14. Stamp-duty was an innovation introduced into this country by the English Company; but so far as regards the fees for institution of suits, it did not mean a new item of taxation; only the mode of payment was changed. A charge was levied on the parties by the *Kazis* who decided cases during the earlier period; and when with the breakdown of the Mughal power, the zemindars assumed some of these functions, the expenses of those who sought a decision or arbitration by them were not less. But the duty, so far as it operated on private transactions or engagements by documents, was a new item of taxation. It was, however, a method of taxation which had been adopted in the European countries much earlier, as quite a reasonable source of public revenue. The Dutch Government had offered a reward for invention of a tax which would press lightly upon the people and yet yield a considerable revenue to the State, and as a result they introduced this system as early as 1624. It was adopted in England during the reign of William and Mary. Regulation VII of 1800 sought to give a justification for the stamp-duty, in the abolition of the Police tax at the time; but the Police tax was revived within a few years, though in a somewhat different form. See Chapter III, *ante*, and also "Introduction" page 48.

Some general
observations regard-
ing stamp-duty.

The stamp-duty in the whole of India in 1856-57 amounted to £4,56,363 and represented 1.6 per cent. of the total revenue. Bengal, as now constituted, yields a stamp revenue of Rs. 2.65 crores.

APPENDIX TO CHAPTER X

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING TO STAMPS

Sir John Shore

Regulation VI of 1797—appointed at Calcutta an officer for issuing “stamped paper” of various denominations : and laid down the descriptions of documents required to be on stamped paper of the prescribed values. These comprised :—

(1) All original deeds of contracts, bargains, sales, mortgages, releases, assignments and other conveyances in writing, or instruments, excepting original deeds relating to marriage settlements and certain kinds of original obligations for payment of money.

(2) Copies of deeds above specified. Sec. 16 laid down that “the parties at whose application such original deeds or instruments or the copies of them, may be prepared *and attested*, shall pay to the *Kazi* or the *Mufti* previous to his delivering the documents, at the rate of one *sicca* rupee, or eight annas, or four annas or two annas, according as may be specified in the stamp affixed to the paper used for every roll or sheet or part of a roll or sheet, so stamped, which may be expended in preparing such original deeds or instruments, or the copies of them.” The *Kazis* and the *Mufties* were then to

pay the Collector 13 annas for every rupee, and retain 3 annas for themselves.

(3) Every petition, answer, reply and rejoinder presented to any Zilla or City Court or any Provincial Court of Appeal or to the *Sadar Dewany Adalat*, in suits for money or personal property or land—

- | | | |
|--|----|--------------|
| (a) of value up to Rs. 100 | .. | four annas. |
| „ Rs. 100 to Rs. 200 | .. | eight annas. |
| (b) of value above Rs. 200 but not appeal-
able to the <i>Sadar Dewany</i>
<i>Adalat</i> | .. | one rupee. |
| (c) appealable to <i>Sadar Dewany</i>
<i>Adalat</i> | .. | two rupees. |

These stamp duties were in addition to the institution-fees laid down in the Regulation which were to be paid in cash for the remuneration of the *Munsifs*, Registrars, etc. The valuation in the case of land was to be the annual produce in the case of *Lakheraj* lands, and the annual *jumma* in the case of *malguzari* land.

Also, for every exhibit, and for every witness in cases of nature (a)—eight annas; in cases of nature (b)—one rupee; and in cases of nature (c)—two rupees.

Same scales for appeal petitions.

Copies of papers from the Civil Courts or Board of Revenue to be on stamped paper—rules similar to those for papers from the *Kazis* and *Mufties*.

(4) All original bonds (*tamsooks*), promissory notes (*teeps*) or other written obligations, except bills of exchange (*hundis*), for payment of money exceeding Rs. 50 :—

- | | | |
|--------------------|----|------------|
| Between 50 and 100 | .. | 4 annas. |
| „ 100 and 1,000 | .. | 8 „ |
| Above 1,000 | .. | one rupee. |

(5) All custom-house *rowanas* or passes, Salt and Rice exempted,—for values exceeding Rs. 50 :—

Between 50 to 100	..	4 annas.
„ 100 to 150	..	8 annas.
„ 150 to 300	..	one rupee.
„ 300 to 1,000	..	two rupees.
„ 1,000 to 5,000	..	four rupees.
„ 5,000 to 10,000	..	ten rupees.
Above 10,000	..	twenty rupees.

(6) *Sanads* to Kazis and authorised *Vakeels*,—Rs. 25.

(Repealed in part by Regulations VII of 1800 and VII of 1809, and wholly by Act XXIX of 1871.)

Regulation X of 1797—Licences for vending spirituous liquors, or intoxicating drugs—Rs. 5 to Rs. 50 according to class.

Sundry rules for penalty in case of evasion of stamp rules.

(Repealed by Regulation VII of 1800, VII of 1809 and I of 1814.)

Lord Wellesley

Regulation VI of 1800—Licences for the sale of intoxicating drugs and toddy to be on stamped paper—at rates from Rs. 2 to Rs. 10 according to class : and also licences for the sale of spirituous liquor, according to the scale in Regulation X of 1797. Distilleries of rum, *arak* and other spirits conducted by Europeans or their descendants, were exempted, provided the products were intended for exportation and not for retail sale in the country.

(Repealed by Regulations I of 1808 and X of 1813.)

Regulation VII of 1800—increased the rates of stamp duty, the Preamble explaining the reasons as :—“ the amount of stamp duties received under the above Regulations (VI and X of 1797), having proved very inadequate to

supply the deficiency of the public revenue, occasioned by the abolition of the Police tax, for which purpose the stamp duties specified in Regulation VI of 1797, were partly established.”

(Repealed by Regulations VII of 1809, XII of 1812 and VII and XXIII of 1814.)

Regulation XI of 1801—All *rowanas* or passes for transit of goods, to be on stamped paper according to the scale in Regulation VI of 1797.

(Repealed by Regulations I of 1802, IX and I of 1814.)

Regulation XL of 1803—Revised rates of values of stamped paper for licences for sale of spirituous liquor (varying from Rs. 5 to Rs. 50) and intoxicating drugs (varying from Rs. 2 to Rs. 10) according to class.

(Repealed by Regulations XX of 1806 and X of 1813.)

Regulation XLIII of 1803—“ With a view to discourage the preferring of litigious complaints, and the filing of superfluous exhibits and the summoning of unnecessary witnesses,” this Regulation extended to the Provinces ceded by the Nawab Vizier, certain rates of institution fees for suits filed before a Native Commissioner as *Munsif*, the Zilla Court, and the Registrar, as well as for appeals and suits in Provincial Courts and *Sadar Dewany Adalat* : and also for exhibits. These were apparently to be in cash : but the fees on petitions, answers, replies, rejoinders when in writing, were to be on stamped paper, and the same scales as in Regulation VI of 1797 were repeated, except that a fee of Rs. 2 was prescribed when the cases were of value over Rs. 1,000. For copies of papers from Courts, certain enhanced rates were fixed as the stamp-duty.

(Extended to the Conquered Provinces and the Provinces ceded by the Peshwa, by Regulation VIII of 1805 : repealed by Regulations XIII of 1806, VII of 1809, I and XXIII of 1814 and Act XVI of 1874.)

Sir George Barlow

Regulation XIII of 1806—Sundry rules to prevent forgery of stamped papers : appointment of Stamp Vendors at the Civil Courts.

(Repealed by Regulations VIII of 1807, VII of 1809, XVI of 1813 and I of 1814.)

Lord Minto (First)

Regulation VIII of 1807—Sundry rules for expeditious supply of stamped paper by the Superintendent of Stamps.

(Repealed by Regulations VII of 1809 and I of 1814.)

Regulation VII of 1809—abolished stamped paper for *rowanas* or passes, *sanads* to *Kazis* and *Vakeels*, and *abkari* licences.

(Repealed by Regulation I of 1814.)

Regulation XII of 1812—fixed 60 days as the time within which stamp must be affixed after execution of document (*vide* Regulation VII of 1800).

(Repealed by Regulation I of 1814.)

Lord Hastings

Regulation I of 1814—consolidated, with some modifications, the previous Regulations regarding stamps and stamp-duty on various kinds of documents, and pleadings, etc., in Courts.

This Regulation also laid down that institution-fees hitherto levied in cash, would be levied in stamps to prevent “ considerable abuses ” and consequent loss of Government revenue. The rates of institution-fees were also increased :—For value Rs. 16 and less—Re. 1 ; for value from Rs. 16 to Rs. 32—Rs. 2 ; for value Rs. 32 to Rs. 64 —Rs. 4 ; for value 64 to Rs. 150

—Rs. 8; for value Rs. 150 to Rs. 300 —Rs. 16; and so on with slightly reduced rates as Rs. 250 for values from Rs. 5,000 to Rs. 10,000, and Rs. 750 for values from Rs. 25,000 to Rs. 50,000.

For petitions (other than complaints) before the Court of the Registrar, the Zilla and City Judge and Provincial Judges (also *Sadar Dewany Adalat*), the stamp required was fixed at 8 annas, one rupee and two rupees respectively.

The Collectors were to be in charge of distribution of stamps and receive 5 p.c. as commission. There was to be a *Darogah* of Stamps in each district and licensed vendors to be remunerated either by pay or commission.

(Repealed by Regulations XXVI of 1814, XVI of 1824 and X of 1829.)

Regulation XXVI of 1814—referred to Regulation I of 1814, and laid down that (1) copies of decrees of Courts, (2) authenticated copies of documents prepared as legal vouchers by *Kazis*, *mufties* or other authorised persons, and (3) security bonds for appearance, required stamped paper.

Vakalatnamas and *Muktearnamas*, arbitration bonds, security bonds for appearance or for eventual payment—not liable to the stamp-duty of exhibits.

No stamp-duty for applications by Collectors, Board of Revenue or Board of Commissioners, to the Courts of Judicature.

(Repealed, so far as regards stamps, by Regulations XIX of 1817, XVI of 1824, and Acts I of 1846, XV of 1850, XVIII of 1852, X of 1861, XI of 1863 and XII of 1873.)

Regulation XIX of 1817—Stamp-duty to be refunded in cases where appeals were referred for further investigation, without a judgment upon merits.

Receipt by pleaders for fees, to be on stamped papers.

(Repealed by Regulations XIV of 1824, V of 1831 and VIII of 1831 and Acts I of 1846 and X of 1859.)

Lord Amherst

Regulation XIV of 1824—Stamped paper of 8 annas prescribed for *Mukteernamas*, *Vakalatnamas*, pleadings and final decrees, irrespective of the value of suit (section 8).

(Repealed by Act X of 1859.)

Regulation XVI of 1824—To prevent forgery, stamped paper to be on paper of European manufacture and with water-mark device of the East India Company's arms, with words "Government Stamp" in English and the words "Ulamut Hukoomut Kumpanee" in Persian.

Rates of stamp-duty revised and embodied in a Schedule : provided penalties for papers requiring stamp being filed without stamps or lower stamps. One Stamp Officer in each district : authorised stamp vendors and licences for them—penalty for over-selling.

The Schedule laid down sliding rates of stamp-duty according to values of various kinds of documents:—

For Bills of Exchange, etc.,—when below Rs. 25—one anna, when Rs. 100 to Rs. 200—annas 8, and so on when one lakh—Rs. 16, above one lakh, 20. Double rates for Promissory notes for re-issue. For Bonds, 2 annas for up to Rs. 20, and then rising to Rs. 10 for Rs. 2,000, Rs. 20 for Rs. 5,000, Rs. 80 for one lakh and so on.

For coveyances,—value up to Rs. 80, eight annas stamp, and then gradually rising to Rs. 20 for value of Rs. 5,000, Rs. 100 for value of one lakh and so on.

For leases,—yearly rent exceeding Rs. 12 but not Rs. 24,—annas 8, then rising to Re. 1 when rent Rs. 100, Rs. 4 when rent Rs. 500, Rs. 10 when Rs. 4,000 and so on.

The Schedule was exhaustive, including a list of the items exempted from stamp-duty.

(Repealed by Regulation X of 1829.)

Regulation XII of 1826—For "the improvement of the revenues" and under the powers vested by sections

98 and 99 of Act 53 Geo. III Cap. 155, stamp-duties were imposed on deeds, instruments and writings "within the precincts of the city of Calcutta." The rates were specified in a Schedule with the Regulation—generally the same as in the Schedule to Regulation XVI of 1824 which applied to areas outside Calcutta.

Similar self-contained rules also as regards stamp vendors, penalties, etc. A separate Superintendent of Stamps in Calcutta was placed in charge, under the control of the Board of Revenue.

(Modified by Act XVIII of 1856 and repealed by Act XXXVI of 1860.)

Lord William Bentinck

Regulation X of 1829—rescinded Regulations I of 1814 and XVI of 1824, and the provisions in all existing Regulations were revised and re-enacted in this Regulation. The rates of 1824 were slightly raised in some cases. Other provisions were also consolidated with some modifications : more detailed rules about stamp vendors, their appointment, licences and duties.

Two Schedules were embodied, *one* called "A" for deeds, instruments and writings : and *another* called "B" for "law papers, *viz.*, petitions of plaint, pleadings, and the like." The rates for the latter were to be levied "in addition to the duties chargeable on deeds, instruments and writings specified in Schedule A."

(Repealed by Regulation VII of 1832, and Acts XVIII of 1837, XVIII of 1852, XLI of 1858 and XXXVI of 1860.)

Regulation VII of 1832—rescinded the stamp-duty on pleadings in the Courts of the Zilla and City Judges from Re. 1 to Rs. 4, in areas where extended powers were or would be given to *Munsifs* and *Sadar Ameens* or Principal *Sadar Ameens* were appointed under Regulation V of 1831.

(Repealed by Act VIII of 1859.)

CHAPTER XI

COINS AND MINT

The use of metal-pieces as medium of exchange, or for lending on interest, or for appraising amercements for offences, was known in India at a very early period. We find their mention for these purposes in the ancient *Pauranic* literature : but probably they were valued merely by weights and not as coins having standard values on the authority of a Sovereign's mark on them. The metals thus in use were gold, silver and copper.¹ There is no record that pieces of leather or wood were used for similar purposes, as believed to have been the custom amongst the Carthagenians, the Spartans and the Romans at one time.

2. Coins as standard mediums of exchange authorised by the Ruler or King, seem to have developed in India at least 400 years² before Christ. The *Arthasastra* written by Kautilya, the mentor of Chandragupta (321-297 B.C.), gives

¹ Gold of the weight of a *gunja*-seed (*Abrus precatorius*) gave a *Ratika*. The measures were as follows :—

For Gold :

5 Ratikas	..	1 Masha
16 Mashas	..	1 Suvarna
4 Suvarnas	..	1 Nishca.

For Silver :

2 Ratikas	..	1 Mashaca
16 Mashacas	=	1 Dharana or Purana
10 Dharanas	=	1 Satamana.

For Copper :

80 Ratikas	=	1 Pana or Cashapana.
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In amercements for offences, there were three grades, viz., 250 Panas, 500 Panas and 1000 Panas. Manu, Chap. VIII, 134, etc.

² It is interesting to note that the earliest known coins in Europe bearing portraits are those of the Kings of Macedon of about this period.

a fairly elaborate description of the royal mint, and how coins were to be prepared with different kinds of metals, and the proportions of alloys. The silver coin was called *raupya-rupa*, and the copper coin—*tamra-rupa*. The Superintendent of the Mint was called *Tanksaladhikari* or, in another reading, *Lakshnadhyaksha*: and there were Examiners of coins, called *Rupa-darsaka*, who “regulated currency both as a medium of exchange (*Vyavaharikam*) and as legal tender admissible into the Treasury (*Kosha-pravesyam*).”¹ Gold coins are not mentioned in this connection; but the manufacture of gold, which was mainly for the purposes of ornaments and gold-threads (*guna*), was under the control of the State, though carried on by private goldsmiths.²

3. In Bengal or Bangadesh, the several Kings³ who reigned in different parts, though at times in confederacy with Magadha, had their own coins. But we would leave this earlier period to the student of Numismatics. The Pathan rulers of Bengal had their own mints, probably at Tanah and Gaur.⁴ To Sher Shah is attributed the silver coin *rupaiya*,⁵ and the use of both gold and silver coins must have been more prevalent in Bengal

Coins in Bangadesh.

—the period.

Pathan

¹ See Chapter XII of Shamasastri's translation of Kautilya's *Arthasastra*, Bangalore Government Press, 1915.

² Chapter XIII, Kautilya, *ibid*.

³ Hsuen-Tsang's *Travels* which bring us up to 645 A.D., give at least six independent kingdoms in Bangadesh: See Thomas Watters's *Yuan Chwang*, Vol. II, pp. 181-96, Oriental Translation Fund, Royal Asiatic Society, 1905.

⁴ Ghulam Hussain Salim's *Riyazu-s-Salatin*: Translation by Mr. Abdus Salam, Baptist Mission Press, 1902. The transfer of the Mint to Murshidabad during the *Mughal* period, is attributed to Mrushed Kuli Khan. E. Thomas's "*Chronicles of the Pathan Kings*" (1871) is illustrated by coins, inscriptions, etc., of this period.

⁵ But the term had an earlier origin from "*raupya*" or silver as in "*raupya-rupa*" in Chandragupta's time. Called also "*tanka*" (hence modern *taka*) as in *Tanksala* (=mint) in *Arthasastra*, probably because of the tinkle-test of silver.

than in other parts. Abul Fazl writing in *Ayteen-i-Akbari* (1603 A.D.) states that unlike other parts of Hindusthan, the Bengal-tenants used to pay their rents in gold mohurs and silver rupees.

4. Part I of *Ayteen-i-Akbari* gives an elaborate account of the royal mint, and indicates the attempts made by Emperor Akbar to standardise the gold, silver and copper coins, and to establish their correlated values with *Dirhems* and *Dinars* in Persia and other countries with which greater facilities of trade had been established during the Muhammadan period.¹

The silver ² coin called *Rupceah*, was round in form, and weighed $11\frac{1}{4}$ *mashas* : the inscription on one side meant "God is greatest, mighty is His glory," and on the reverse the date was given. A silver coin of square form called *Jilaleh* is also mentioned, with halves, fourths, fifths, eighths, tenths, sixteenths and twentieths, as smaller coins, the last being called *Sooky*. The *Jilaleh* rupee was equivalent to 40 *dams* in value, and the round rupee 39 *dams*.

The copper coin was the *dam*, in value 40th part of a rupee, and in weight ³ 1 *tolah*, 8 *mashahs* and 7 *ruttees*. It is said that formerly it was called *Pysah* ⁴ and also *Behlooly*. There were halves called *Adhelah*, fourths called *Powlah* and eighths called *Damree*.

¹ For fuller account see S. Lane Poole's *Brit. Mus. Cat.*, "Coins of the Mughal Emperors" (1892).

² The preparation of this silver by workmen is described thus :—"He takes one *tolah* (of pure silver) with a like quantity of lead, which he puts together in a bone crucible, and keeps it on fire till all the lead is burnt. Then having sprinkled the silver with water, he hammers it till it has lost all smell of lead : and having melted in a new crucible, he weighs it, and if it has lost half a *rutty* it is sufficiently pure : otherwise he melts it again till it comes to that degree."

³ Equivalent to 324 grains troy.

⁴ But the copper coin "pice" now current is still called "Pysah".

The gold coins were of four descriptions of which two are mentioned, *viz.*, (1) *Laal Jilaly*—
The *Mohur*. weighing one *tolah* and $13\frac{3}{4}$ *ruttees*, and in value 400 *dams*, and (2) *Mohur*—weighing 11 *mashas*, and in value 360 *dams*. Other kinds of *mohurs* introduced at different times had slightly lesser weights, and their equivalent values in *dams* were stated.¹

5. For gold-coining, there were mints in the royal name at the capital cities of the Subahs of Agra, Bengal, Guzrat and Cabul. Silver and copper coins were struck in a number of other cities also and it is said that “a great deal of traffic is carried in this flourishing country (meaning Hindusthan) in *mohurs*, as well as in rupees and *dams*.”
The Mints—
Mughal period.

6. Akbar's plan was based on taking the copper *dam* as the standard with reference to which the values of different kinds of gold and silver coins would vary. But though at first all coins were struck chiefly at Delhi, there was not much restriction even within the directly administered territories. Sher Shah had permitted coining at a number of places. In fact this was his plan, probably owing to difficulties of transport in those days: and in spite of what seems from *Ayteen-i-Akbari* to be an attempt to standardise, there was no effective restriction; so that by the time of Bahadur Shah II, there were no less than 200 different places where Mughal coins were struck, often with different standards. Further complications arose

¹ Prior to Akbar's time, the *Tanka* introduced by Emperor Altamash (1233 A.D.) was about 175 grains of silver: and later (1325-51) Muhammad Tughlak reduced the weight to 140 grains; but the 175 grains *Tanka* continued. The greatest reform was by Sher Shah (1540-45) who adopted the term *Rupaiya* or Rupee for common use, for the silver coin. The weight he fixed was 179 grains, based, it is said, on the theoretical weight of a *Rati* or gunja-seed (*Abrus precatorius*), which in fact varies from 1.75 to 1.96 grains. Throughout this period, the Princes and Rulers in the unconquered Provinces or semi-conquered tracts had their own currencies: Imperial Gazetteer of India, Vol. IV, Chap. XVI.



as, with the weakening of the central authority, debasements developed from attempts to illicit profiteering in the local mints scattered all over the country. There were also separate coins in the independent or confederate States.¹

7. Thus it was that when the East India Company took over the reins of administration in Bengal they found that there were at least 27 varieties of rupees current in the Province, including Behar. Some of them were coins of other Provinces, and some were older coins still in use. It was of course impossible to stop the former, and as regards the latter their currency was mainly due to insufficient arrangements in the past to recall them and stop their re-issue. Regulation XXXV of 1793 thus gave a list² of these varieties of rupees and put their equivalent values in terms of the *Sicca*³ rupees struck in the Mints at Murshidabad, Dacca and Patna. It also provided that these rupees of sorts when received in the

¹ In England also money was struck by barons and bishops, especially during King Stephen's reign, with special privileges; and besides these, moneyers were numerous up to the time of William III, and later, till the modern system had its start on the scheme of Lord Herschel about 1850.

² The rupee known as Phooley Sonwats had the same value, viz., 100, as the *Sicca* rupee. The Benares rupee had three varieties with values in percentage of the *Sicca* rupee as below:—

Benares <i>Sicca</i>	.. 99.50
Benares rupee old	= 95.90
Benares <i>Trisuli</i>	= 92.40

The Delhi rupee called Mahomet Shai and Surat large money had the same value as Benares *Sicca*, viz., 99.50. There were two varieties of French Arcots, values 97.0 and 97.38. The Dutch Arcot was valued at 95.0 and the Surat Arcot at 94.0. Two varieties of Bengal (Calcutta or Murshidabad) Arcots were still in use, one old 95.20, and another—95.45. The Madras Arcots, new, had 95.30 and old—95.90. Besides these there were five other varieties of Arcot rupees with values from 95.70 to 97.90. The lowest value were for the Vizierly rupee—63.00. But the more important coin in use was Furruckabad rupee which had value 95.80.

³ The word "*Sicca*" means a die, and hence coin. The term came into use probably to distinguish the newly coined rupee from the coin of past years (*Sonwat*).

Treasuries, would not be re-issued, but would be sent into the mints to be re-coined into the standard *Sicca* rupee.

8. The supply of silver for the coinage of *Sicca* rupees, was not, however, sufficient: and the period of acceptance of these varieties of coins was extended from time to time, till there was a marked improvement about 1812. To facilitate the "flow in" of these coins, and also of light coins, Reg. LXI of 1795 laid down that deficiencies up to 6 annas for one hundred rupees would be ignored. No charge was at first made on silver bullion or old or light silver coins for refining for the purpose of coining; but as conditions improved, a charge of 12 annas per cent. was imposed in 1803 (Reg. XLV). Later in 1812 (Reg. II), a duty of 2 per cent., was levied on all silver bullion or coin, not being rupees struck at the Calcutta Mint, which might be delivered into the Calcutta Mint for coinage.

9. The *Sicca* Rupee struck at the Company's mints at Calcutta, Patna and Murshidabad, had
Sicca Rupee of the 19th Sun. a standard of 179-2/3 grains Troy, with 97-11/12 per cent. of "touch" or parts of fine silver and 2-1/12 per cent. of alloy (Reg. XXXV of 1793). It was called the Nineteenth Sun *Sicca* Rupee, being introduced in the 19th year of the reign of Emperor Shah Alam.¹ On the acquisition of the territories ceded

¹ The coins were issued in the name of the Emperor of Delhi: and this mark of respect, and in one sense of sovereignty—though in name (or a "mark" as it has been called),—was maintained till the renewal of the Company's Charter in 1833. Thereafter, the coins issued were in the name of the East India Company with the King's medallion on them (*vide* the Coinage Acts XVII and XXI of 1835).

The first authority from the Mughal power may be traced to the permission granted by Emperor Furrukh Sher in 1717 to the Company, to mint coins for use in the Company's possessions. Prior to this the Company had established a Mint at Bombay in 1671, but this was resisted, and in 1686 James II authorised the Company to issue in all their Forts, "copies" of current native coins. In 1742 permission was obtained from the Mughal Emperor, to coin imitations of Arcot rupees. The Calcutta Mint was recognised by the Nawab of Bengal in 1757; and soon after the battle of Buxar in 1764 (and almost simultaneously with the



by the Nawab Vizier of Oudh, a mint was established at Furruckabad where silver coins called *Sicca Rupee* of the 45th Sun. "Lucknow Forty-fifth Sun *Sicca Rupees*" were struck, with the same size and form as the "Calcutta Nineteenth Sun *Sicca Rupee*" (Reg. XLV of 1803); but the weight and composition as fixed later (Reg. III of 1806) were different. The weight of this Lucknow rupee was 173 grains Troy (or $6\frac{2}{3}$ grains less), and the alloy was $4\frac{1}{2}$ per cent. instead of $2\frac{1}{12}$. With 100 for this rupee, the 19th Sun Calcutta *Sicca Rupee* stood at 102.57. An amazing variety of coins were met with in this part of the country, and the Regulation of 1806 mentions no less than 47 kinds, with varying values, including some of the 27 kinds which were in use in Bengal and Behar. While all these varieties of coins were being absorbed, the weight and composition of the Calcutta *Sicca Rupee* were revised by Reg. XIV of 1818. The weight was raised to 191.916 grains, with 175.923 grains of fine silver and 15.993 grains of alloy. The quantity of pure silver was thus slightly higher. In the next year the Furruckabad Rupee was declared as legal tender in Benares, but not in Bengal, Behar and Orissa (*vide* Reg. XI of 1819). The same Regulation revised the composition of Furruckabad Rupee to 165.215 grains of pure silver and 15.019 grains of alloy. Although the Preamble to this Regulation had the pertinent observation that "the existence of different local currencies in a country subject to one common authority" was inconvenient, the plan adopted did not go far enough to establish a uniformity. There were obvious difficulties, and one illustration of this is the mention of *Gohur-Shahi* or *Trisuli* Rupees in Reg. V of 1821. There were engagements with landholders, in terms of these "*rupees*," and

Dewany) the entire mintage at Patna, Murshidabad and Dacca was taken over by the Company.

this Regulation had to recognise them, indicating their equivalent values for Furruckabad Rupees.

The Furruckabad Mint was abolished in 1824 (Reg. II) : but the coins of this name though —in 1833.

struck at the Calcutta Mint, continued to be recognised. The last of the Regulations on silver coinage, was Reg. VII of 1833. It again revised the weights and compositions of these two kinds of Rupees :—

	<i>Fine silver</i>	<i>Alloy</i>	<i>Total</i>
Calcutta <i>Sicca</i> Rupee	176 grains	16 grs.	192 grs.
Furruckabad Rupee ..	165 „	15 „	180 „

They were also declared as legal currencies in the Presidencies of Madras and Bombay. The Regulation also laid down the following standards of weights :—

8 Rutees = 1 Masha = 15 Troy grains.

12 Mashas = 1 Tola = 180 Troy grains.

80 Tolas (or *Sicca* weight) = 1 Seer = $2\frac{1}{2}$ lbs. Troy.

40 Seers = 1 Mun or Bazar Maund = 100 lbs. Troy.

10. It is striking that there is no mention of copper coining for Bengal and Behar in the earlier Regulations, nor any mention of the Mughal *dam* or *damree*. Halves

and quarters of Rupees were not standardised for these Provinces till 1818 (Reg. XIV). But *Cowries* (small shells) are mentioned in Reg. XVIII of 1806 for payment of small sums as tolls ¹ on the ferries in certain canals in the 24-Parganas area. The first mention of copper-coinage in the Regulations is in 1803 (Reg. XLV) in connection with

the Ceded Provinces. The copper pice or *pysa*, established in this area was also designated as coin of the 45th Sun, weighing $284\frac{1}{2}$ grains troy of pure copper, and also half-pice with half that weight. These coins were to be struck

¹ 5 gandas of *cowries* for a foot passenger ; if with load—1 *pun* ; a bullock—2 *pnus* ; and a palanquin with bearers—4 *annas*.



at the Furruckabad Mint, but their corresponding value with reference to the Rupee was not stated. These copper coins were extended to the Conquered Provinces situated within the Doab and on the right bank of the Jamuna, in 1805 (Reg. XI); and in 1806 (Reg. III) it was declared that 26 Pice would be taken as equivalent to a Lucknow *Sicca* Rupee. The weight was reduced to 200 grains for the Pice (it was the Double-Pice), and to 100 grains for the half (or Single), by Reg. XXI of 1816, which also declared that 32 whole (*i.e.* Double) Pice and 64 half (*i.e.*, Single) Pice gave a Furruckabad Rupee. Regulation X of 1809 declared that the copper coin for the Province of Benares was to have the impression "The 37th year of the reign of Shah Alam" on one side, and "One Pice *Sicca*" on the other. Sixty-four such pice gave a Benares *Sicca* Rupee: and the diameter of each Pice was to be 19/20ths of an inch. The Regulations are somewhat confused on this subject: but it would seem that copper pice was minted at Calcutta not only of the Furruckabad and Benares variety, but also for currency in Bengal. This would seem from Reg. XXV of 1817 which indicates the establishment of one uniform standard of copper Pice with 100 grains Troy, 64 such Pice making up a "rupee of the local currency throughout the Provinces subject to the Presidency of Fort William." The copper Pie (one-third of a Pice) was not introduced till 1831 (Reg. III), when the copper half-anna (or Double Pice) was also revived. The Pie was to weigh one-third *i.e.*, 33.333 grains, and the Double-Pice 200 grains.

—in the Conquered Provinces:

—in Benares.

Generally—
throughout.

11. We have noted that the Regulations make no mention of the Mughal *Dam* or *Damree*, but there is mention of *Cowries* or small sea-shells, for currency. These must have been more

Cowries.

prevalent in southern Bengal and Orissa than in the rest. The first mention of *Cowries* is in Regulation XII of 1805 relating to the Zilla of Cuttack including Pattaspore, Kumardichaur and Bogri. The currency of the 19th Sun *Sicca* Rupee was extended to this area by this Regulation, which also provided that *Cowries* would be received at the rate of four *Cawons* (*i.e.*, 1280) per *Sicca* Rupee, up to a certain period of time. In a Regulation (XVIII) of 1806, *Cowries* are mentioned for payment of tolls on ferries ; and so also in Reg. VIII of 1824 : but their use gradually discontinued with the introduction of the Pice and the Pie.

12. Gold coins were struck at the Company's mints at Patna, Murshidabad and Dacca, besides Calcutta, at the same time as the *Sicca* rupee. The earlier *Mohurs* of 1765-66 had gold content of lesser value, and passed for 14 *Sicca* rupees. A new type of *mohur* was devised in 1769, and this passed as equivalent to 16 *Sicca* rupees. This type was retained in the orders of 1792 and later incorporated in Regulation XXXV of 1793 which consolidated the previous orders.

The 19th Sun gold *mohurs* : halves and quarters. The *mohur* was called the Nineteenth Sun Gold Mohur and had halves and quarters.

The full *mohur* had 190.894 grains of Troy weight, with $99\frac{1}{4}$ per cent. of " touch " or parts of fine gold and $\frac{3}{4}$ per cent. of alloy ; and the halves and quarters were proportionately similar. Importation of gold from outside, was however, not looked with favour ; and the same Regulation of 1793 when imposing a special duty of Rs. 2-8-0 to Rs. 3-12-0 per cent. on gold bullion, stated the reason as—" with a view to discourage the importation of gold bullion in preference to silver bullion."

No gold coinage was permitted at the Lucknow or Benares Mints : and in Bengal it was centralised at the Calcutta Mint. The value of a gold *mohur* was put at



16 *Sicca* rupees (Reg. XXXV of 1793): but by a proclamation in 1814 instructions were issued that gold *mohurs* would be received at the rate of 15 *Sicca* rupees for a *mohur*. The weight and composition were revised in 1818 (Reg. XIV), and compared with 1793, stood as below:—

		<i>Gold</i>	<i>Alloy</i>	<i>Total</i>
Subsequent alterations in weight and composition.	1793	189.457	1.437	190.894
		grains	grains	grains
	1818	187.651	17.059	204.710
		grains	grains	grains

13. This was how the relative values of the gold *mohurs*, the silver rupee and the copper pice stood at the close of the Regulation period of the Company's administration. Their true correlation with the English sterling pound in actual business, is not, however, very clearly stated. The earlier official accounts were exhibited with two shillings for a rupee or ten *sicca* rupees¹ for a pound sterling, while 16 *sicca* rupees were equivalent to a gold *mohur*. The comparative assay stated in Reg. XXV of 1793 for the gold in the *mohurs* is stated as English standard gold, better—1 carat $3\frac{1}{4}$ grains.² The adoption of ten *sicca* rupees as equivalent to a pound sterling for official accounts, was more or less artificial, intended more for convenience in presenting figures than for any attempt to adapt to fluctuations³ in the exchange.

¹ Grant's Analysis, 27th April, 1786.

² The quantity of gold in a pound sterling is 112.919 grains (the remaining 10.355 grains being alloy): and the quantity of gold in the earlier *mohurs* was 177.417 grains.

³ The exchange rate for the rupee was sometimes 2s. 2d. and at other 1s. 10½d. From 1834 the accounts of transaction in India were presented in rupees: but when accounts were presented in sterling (as in 1854-55) the conversion was made at 1s. 10½d.

What really happened during the Company's period was that although gold *mohurs* were produced at certain Mints, the rupee was the coin most commonly used: and two years after the renewal of the Charter in 1833, an Act was passed (Act XVII of 1835) which though authorising the coinage of gold *mohur* (=15 rupees), did not recognise it as legal tender. The subsequent developments are outside the scope of this discourse; but it may be mentioned that Act XXIII of 1870 repeated the authority of coining "gold *mohurs* or fifteen-rupee pieces," and it was not till the rapid decline in the value of silver as compared with that of gold which became marked from about this period, that it was felt that considerable loss was being suffered by the Government of India in remittances to meet sterling obligations in England.¹ Eventually, the coinage of gold *mohurs* was altogether stopped, and from 1899, the English sovereigns and half-sovereigns became legal tender.² The rupee, which also continued to be legal tender, became henceforward only a token coin representing a certain proportion of the sovereign. In the mean time these provisions in the Act of 1870 having become obsolete were repealed by the Obsolete Enactments Repeals Act XII of 1876.

14. Grant in his Analysis of the Finances of Bengal (1786), estimated that during the Mughal period immediately preceding the Dewany, only about three crores of rupees were in circulation amongst a population of ten million souls, and that of this amount not more than half or about

Stoppage of gold *mohurs*, and establishment of silver currency.

Early account of specie in circulation:

¹ Apart from this the violent oscillations in the rate of exchange considerably upset trade conditions, and checked the influx of British capital for investment in India: Imperial Gazetteer, Vol. IV, p. 517.

² The rate then was 1s. 1d. to the rupee. No sovereigns or half-sovereigns are, however, minted in India.



1½ crores, were brought in the mint for annual re-coinage. He further estimated that at least one crore of rupees in money, were sent every year to the Emperor at Delhi,

—drainage of one crore of specie to Delhi from Bengal every year :

“ which never again returned into the circulation of the country ” except what happened through the operations of commerce as it existed then. Whatever the

value of these estimates, his observations indicate clearly that there was already a heavy deficiency in specie in the Province. Comparing the earlier period with that after the Dewany, Shore, in his Minute of 18th June, 1789, observed :—

“ Every information from the time of Bernier to the acquisition of the Dewany, shows the internal trade of the country as carried on between Bengal and the upper parts of Hindusthan, the Gulf of Moro, the Persian Gulf and the Malabar Coast, to have been very considerable. Returns of specie and goods were made through these

—return of the drainage ceasing after the Dewany :

channels, by that of the foreign European Companies, and in gold dust for opium, from the eastward. But from the year

1765, the reverse has taken place. The Company's trade produces no equivalent returns. Specie is rarely imported by the foreign Companies ; nor brought into Bengal from other parts of Hindusthan, in any considerable quantities.”¹

He continued further—“ The exports of specie from the country for the last twenty-five years, have been greatest, and particularly during the last ten of that period. It is well understood, although the remittances to China are, by the Government, provided by bills, that specie

¹ Bernier (during the reign of Shah Jehan) states that although a large variety of articles were obtained from outside (such as Copper from Japan, Lead from England, Cinnamon from Muscado, Horses from Arabia, Persia and Tartary), there was such a return-supply of agricultural and industrial products of India that hoards in gold and silver always came in and never to return.

to a large amount has been exported to answer them : in the same manner great part of the sums sent by bills of the shroffs to Bombay and Madras, travel over the peninsula in bags. Silver bullion is also remitted by individuals to Europe ; the amount cannot be calculated, but must, since the Company's accession to the Dewany, have been very considerable."

And he concluded—" Upon the whole I have no hesitation in concluding that, since the Company's acquisition of the Dewany, the current specie of the country has been greatly diminished in quantity ; that the old channels of importation by which the drains were replenished, are now in a great measure closed ; and that the necessity of supplying China, Madras and Bombay, with money, as well as the exportation of it by Europeans to England, will continue still further to exhaust the country of its silver."

15. The efforts in the earlier Regulations were thus directed towards obtaining as much silver for the mints as were possible in the circumstances. The currency of a bewildering variety of coins then in circulation, was tolerated, but mainly with a view to securing their silver in the mint for coinage of the standardised 19th Sun *Sicca* rupees. Import of silver bullion was also encouraged : but import of gold was discouraged. Gradually thus silver coin became the current specie, and the tenants or the Zemindars instead of paying in " mohurs and rupees," brought only " rupees."

16. There were no currency notes or Bank as we know today. But there were private Bankers or Shroffs, some of whom held such respectable position that their *hundis* or bills of exchange, were readily negotiable throughout the

—drainage from Bengal to Bombay and Madras and to Europe :

—hence serious deficiencies in Bengal itself.

Efforts in the Regulations to improve the condition.

Early Bankers and *hundis*.



country, and often beyond the boundaries of India. They were sometimes employed by the Ruling Power, as for instance Jagat Sett in the later days of Mughal Subahdarship in Bengal.

17. In the interior of the country the host of petty village *mahajans* or money-lenders catered to the needs of the people. But howsoever the position might have been during the well-administered period of Mughal rule, the system of "barter" was very much prevalent during the declining stage of that power. The disorder which became marked shortly after the death of Emperor Aurangzeb, had its repercussion in Bengal, where, in particular, the constant raids by the Maharattas made any kind of wealth insecure. Generally, the rural population lived on what they could get in their own villages, and the standard was very low.¹ If the people were still happy, it was the blissfulness of ignorance of not knowing about any better standard,² which they might desire for. All these circumstances affected the demand for specie: but with the establishment of law and order and improvement of trade and industries³ which followed the reform of Warren Hastings in 1773

Specie-lending in the interior.

Barter and low standard in villages.

Increased need for specie with improvements in local conditions.

¹ Grant, writing in 1786, estimated 3 million pieces of cloth as the annual production for the needs of 10 million people! This was absurd even if it be assumed that all children below 5 or 6 years of age went about naked. But his account indicates the depth of poverty at the time and the mean standard in which the common people lived.

² The standard of living in cities might have been better: but the rural people had little chance to imbibe a "discontent" from comparison, for travelling was difficult and insecure, and very few knew anything outside their villages.

³ Up till at least 1812, the industries of Salt-manufacture, weaving—both cotton and silk—and cultivation of poppy for opium, received particular encouragement. Advances were given by the Company's agents direct or through sub-agents, and whether the object then was to obtain large investment and increased return from trade, the effect was that the output from these industries rapidly increased.

and more particularly the measures since 1793, the need for the circulation of larger quantities of specie rapidly grew. Coinage was thus an important item of legislation during a series of years.

18. However, to minimise the difficulties arising from shortage of specie, Warren Hastings
Early Bank—
enterprise. devised a plan of remittances through a Bank. He established thus the General Bank¹ of 1773. This Bank charged commission at rates varying from $\frac{1}{4}$ per cent. to $2\frac{1}{4}$ per cent. according to distance, and the directors of the Bank were also to get a share of the net profit. The scheme was disapproved by the Court of Directors, amongst other reasons, for the extra cost involved in remittances of Government money to and from district treasuries. It was thus abandoned in 1775.² Independent Banking business was, however, started by European commercial houses. The Banks which thus operated at various times were the Bank of Hindusthan which existed till 1832, the old Bengal Bank which ceased in 1800, the General Bank of India, etc. Later there were Presidency Banks in Bengal, Bombay and Madras, and these were
Paper currency. authorised³ to issue notes payable on demand—the first currency notes. Government paper-currency was established in 1861 by Act XIX of that year.

¹ The directors were Rai Dayal Chand of the family of Jagat Sett and Huzuri Mal a respectable merchant of Calcutta.

² Governor-General's Despatch, dated the 25th February, 1775.

³ Act VI of 1839 for Bengal, Act III of 1840 for Bombay and Act IX of 1843 for Madras. These Acts were repealed by the Paper Currency Act XIX of 1861 which provided for the issue of a paper currency through a Government Department of India payable to bearer on demand.

APPENDIX TO CHAPTER XI

CHRONOLOGICAL SYNOPSIS OF THE REGULATIONS RELATING
TO COINS AND MINT

Lord Cornwallis

Regulation XXXV of 1793—(Rules of 31st November, 1792)—referred to establishment of Mints at Patna, Murshidabad and Dacca, in addition to the Mint at Calcutta, for coining gold mohurs and *sicca* rupees, with the following names and standards :—

Nineteenth Sun Gold *Mohurs*—to have 190.894 grains of Troy weight (17 annas Bengal weight), with $99\frac{1}{4}$ per cent. of Touch or parts of fine gold and $\frac{3}{4}$ per cent. of alloy. Assay compared with English standard gold, better—1 carat $3\frac{1}{4}$ grains.

Nineteenth Sun *Sicca* Rupee—to have $179\frac{2}{3}$ grains Troy weight (Bengal weight 16 annas), with $97\frac{1}{2}$ per cent. of Touch or parts of fine silver and $2\frac{1}{2}$ per cent. of alloy.

Provided also for halves and quarters of gold *mohurs*. Each gold *mohur* was to be accepted at the rate of 16 *sicca* rupees of the 19th Sun : and each half and quarter *mohur* in proportion. Same to apply to gold *mohurs* coined at the Calcutta Mint between 1769 to 1792.

Besides the *sicca* rupees coined at Calcutta, Patna, Murshidabad and Dacca, there were 25 other varieties of silver rupees of various names which were current. This Regulation laid down the proportionate values of these various kinds of coins at which they might be accepted varying, from 63 per cent. to 99.5 per cent. Coins called Phooley Sonwats had the full value of a *sicca* rupee of the 19th Sun. Pending fuller circulation of the *sicca* rupees, acceptance of these various coins at these values at the Government Treasuries, was permitted till 10th April,

1794 : after this date only the standard 19th Sun coins were to be legal tenders for public and private transactions.

Coins other than the standard 19th Sun gold *mohur* (with halves and quarters) and the 19th Sun *sicca* Rupees, (with halves and quarters) received in the Treasury, would not be re-issued, but would be sent to the Mints for coining according to the standard. Similarly it was provided that for all silver bullion or old or light silver coin equal to or above *sicca* standard, which might be delivered at the Mints, a number of 19th Sun *sicca* rupees of equivalent weight would be given. For inferior bullion or coin, payment would be made with a deduction of twelve annas per cent. per one hundred rupees.

“ In consideration of the expense incurred in refining gold, not of gold *mohur* standard, and with a view to discourage the importation of gold bullion in preference to silver bullion,” a duty of Rs. 2-8-0 to Rs. 3-12-0 per cent., was imposed on gold bullion delivered at the Mints for coinage.

(Repealed in part by Regulations VI of 1794, LIX of 1795, III of 1799, LIV of 1803, II of 1812, XIV of 1818, and wholly by Act VIII of 1868.)

Sir John Shore

Regulation VI of 1794—extended the period of the currency of non-standard coins up to 10th April, 1795.

(Modified by Regulations LIX of 1795, XIII of 1807 and repealed by Act VIII of 1868.)

Regulation LIX of 1795—extended the period to 10th April, 1796.

(Repealed by Regulation XIII of 1807 and Act VIII of 1868.)

Regulation LXI of 1795—mentions the ancient usage of acceptance of light coin in private or public transactions,

on payment of an allowance or *batta* for deficiency : and of exaction on this account from the tenantry : then provided—that deficiency up to 6 annas for 100 rupees, *i.e.*, up to $\frac{6}{100}$ ths of a rupee would be ignored : and when the deficiency was above this limit—for one hundred *sicca* weight of such light 19th Sun *sicca* rupees, the payer would receive credit for similar number of such rupees, but the light coins were not to be re-issued again. The reason for this was that owing to many fine raised points in the coins then produced, the wearing out was excessive, and fresh coining could avoid such raised points.

(Repealed by Act VIII of 1868.)

Regulation LXII of 1795—withdrew the Mint established at Murshidabad under Regulation XXXV of 1793.

(Repealed by Act VIII of 1868.)

Lord Wellesley

Regulation XLV of 1803—The Preamble mentioned that in the Provinces ceded by the Nawab Vizier, rupees and also copper pice, of various denominations were in circulation to the inconvenience of all concerned. *Sicca* rupees of the 45th Sun, “ comparing in weight and standard with *sicca* rupee at present struck at Lucknow ”—to be legal tender in the Ceded Provinces : size, form and inscriptions (in Persian) specified : also for half and quarter rupees : edges to be milled (to guard against counterfeiting, clipping, drilling, etc.) : a Mint Committee established at Furruckabad. Settlements of land-revenue to be made in the Ceded Provinces in Lucknow *sicca* rupees : transitional rules regarding other kinds of silver coins.

Silver bullion or old or light silver coins to be received at the Mint after deducting 12 annas per cent. for the expense of refining.

Mint at Bareilly discontinued.

No gold coining for the Furruckabad Mint, as *mohurs* " have never obtained an extensive circulation " here.

A copper coin of 45th Sun, weighing $284\frac{1}{2}$ grains Troy and consisting of pure copper, was established in the Ceded Provinces.

(Extended to Ceded and Conquered Provinces by Regulations VIII of 1805, and repealed by Regs. IV of 1807, II of 1812 and XXVI of 1817.)

Lord Cornwallis (Second time)

Regulation XI of 1805—extended Reg. XLV of 1803 to the Conquered Provinces situated within the Doab and on the right bank of the Jamuna.

(Repealed by Act VIII of 1868.)

Regulation XII of 1805—related to the Zilla of Cuttack including the parganas of Pattaspore, Kumardichaur and Bogri : extended the time of paying in coins (other than the 19th Sun *sicca* rupees) according to Regulation XXXV of 1793, up to the end of the *Willaity* year 1215.

Also provided that in this area *cowries* would be revived at the rate of four *cawons* per *sicca* rupee, up to that period.

(Suspended by Regulation IV of 1807, and repealed by Act XVI 1874.)

Sir George Barlow

Regulation III of 1806—related to the Ceded and Conquered Provinces (Regs. XLV of 1803 and XI of 1805 *ante*) : and laid down proportionate values of the different kinds of coins still prevalent in this area : specified no less than 47 kinds of silver rupees, besides the *sicca* rupees of Lucknow, Calcutta, Murshidabad, Patna, Dacca and Furruckabad. The standard weight of the Lucknow *sicca*

rupees fixed at 173 grains (Troy), with $95\frac{1}{2}$ parts of fine silver and $4\frac{1}{2}$ parts of alloy.

For copper coin (pice), the weight was $284\frac{1}{2}$ grains troy.

(Repealed by Regulation IV of 1807 and Act VIII of 1868.)

Lord Minto (First)

Regulation IV of 1807—owing to delay in preparing the equivalent values of different kinds of coin, this Regulation permitted, as a temporary measure, the re-issue of coins of sorts received in the Treasuries in the Ceded and Conquered Provinces. Also for Benares and Calcutta.

(Repealed by Act VIII of 1868.)

Regulation XIII of 1807—provided for determination of corresponding values of the 19th Sun gold *mohurs* and *sicca* Rupees, for amounts in bonds and engagements, mentioning different kinds of coins : Table in Regulation XXXV of 1793 to be followed in the adjudication of the *Dewany Adalat* in this respect.

(Repealed by Act VIII of 1868.)

Regulation X of 1809—related to the copper coin for the Province of Benares : to be struck at the Calcutta Mint : Pice to have $\frac{19}{20}$ th parts of an inch in diameter, weight 8 annas 9 pies *sicca* and bear the following inscription in the Persian and Nagree characters :—

“ The 37th year of the reign of Shah Allum Badshah ” on one side, and on the other “ One Pice Sicca.” It was to be legal tender at the rate of 64 pice per one Benares *Sicca* Rupee.

(Repealed by Regulations XII of 1810, VII of 1814 and Act VIII of 1868.)

Regulation XII of 1810—abolished the time limit for the currency of copper coin in the Province of Benares.

(Repealed by Act VIII of 1868.)

Regulation II of 1812—All silver bullion or coin, not being rupees struck at the Calcutta Mint, which might be delivered into the Calcutta Mint for coinage, were to be subject to a duty @ 2 per cent. on the produce of such bullion or coin in *sicca* rupees of the Calcutta weight, and the amount payable to the proprietor (*i.e.*, the person bringing the bullion or coin) would be the net amount after deduction of the above duty.

Similarly, for all gold bullion or gold coin, below the *mohur*-standard, which would be delivered into the Calcutta Mint for coinage, the duty was to be Rs. 2-8-0 per cent. and also a charge at a scale (given in a Table) on account of loss and expense of refining.

Some further details regarding coinage at Furruckabad and Benares.

(Repealed by Regulations XIV of 1817, XIV of 1818, V of 1819 and VII of 1826 and Acts VIII of 1868 and XXIII of 1870.)

Lord Hastings

Regulation VII of 1814—provided for the coinage of copper coin for the Province of Benares, at Benares instead of at the Calcutta Mint (*vide* Reg. X of 1809 *ante*).

(Repealed by Act VIII of 1868.)

Regulation XXI of 1816—reduced the weight of the copper coins for the Ceded Provinces, to 200 grains (Troy) for the whole or double pice and 100 grains (Troy) for the half or single pice—to be struck at the Furruckabad Mint. Such copper coins to be issued at the rate of 32 whole or double pice and 64 half or single pice for each rupee.

(Repealed by Act VIII of 1868.)

Regulation XIV of 1817—revised the Table for gold bullion in Regulation II of 1812.

(Repealed by Acts VIII of 1868 and XXIII of 1870.)

Regulation XXV of 1817—Copper pice struck at the Calcutta Mint to be of pure copper and of the weight of 100 grains Troy. One *sicca* rupee to be equivalent to 64 pice.

Furruckabad and Benares pice to be equally current throughout.

(Repealed by Acts XIII of 1836 and VIII of 1868.)

Regulation XXVI of 1817—Furruckabad rupees struck at the Mints of Calcutta, Furruckabad or Benares, or at any other Mint established by order of Governor-General in Council, declared to be the established and legal silver coin in the Ceded and Conquered Provinces.

(Repealed by Act VIII of 1868.)

Regulation XIV of 1818—revised weights and standard of Calcutta *sicca* rupee and gold *mohur* :—

	Fine gold	Alloy	Total weight
Gold <i>Mohur</i>	187.651 grs.	17.059 grs.	204.710 grs.
<i>Sicca</i> Rupee	175.923 „	15.993 „	191.916 „
Halves and Quarters, half and quarter of above.			

Such coins to be legal tender in like manner as the 19th Sun *Sicca* Rupees.

(Repealed by Regulations V of 1819 & VII of 1833, and Act XXIII of 1870.)

Regulation V of 1819—Sundry rules regarding the conduct of business in the Mints : Governor-General in Council reserving to himself the power of altering the form and inscription of the coins struck at the Mints.

(Repealed by Regulation XXIII of 1870.)

Regulation XI of 1819—“ The existence of different local currencies in a country subject to one common authority ” was inconvenient : hence the coinage of the Benares rupee was stopped and the Furruckabad rupee was declared as legal tender in Benares. Not however legal tender in Bengal, Behar and Orissa whether struck

in Calcutta or Benares. Furruckabad rupee to have—165.215 pure silver and 15.019 grains of alloy. Rates of charge for recoinage of Calcutta, Benares or Furruckabad rupees put at not more than one per cent.

(Repealed by Regulation VII of 1833 and Act VIII of 1868.)

*Regulation V of 1821—Gohur-Shahi or Trisuli rupees mentioned in the engagements with *malguzars*—their equivalent values for Benares and Furruckabad rupees.*

(Repealed by Act VIII of 1868.)

Lord Amherst

Regulation II of 1824—abolished the Furruckabad Mint : previous coins to be received if not deficient by more than 1.875 grains (Troy) per rupee.

(Repealed by Act VIII of 1868.)

Regulation VII of 1826—transferred the control of the Benares Mint from the Board of Revenue, Central Provinces, to a Local Committee.

(Repealed by Act VIII of 1868.)

Lord William Bentinck

Regulation III of 1831—introduced coining of copper half-anna (double the weight of copper pice) and copper pie (to weigh 33.333 grains or one-third of a pice), to be current throughout the Presidency of Bengal.

*Regulation VII of 1833—altered the weight of the new Furruckabad Rupee and assimilated it to the legal currency of the Madras and Bombay Presidencies : also adjusted the weight of the Calcutta *sicca* Rupee (and fixed a standrad weight for India) :—*

	<i>Fine silver</i>	<i>Alloy</i>	<i>Total weight</i>
Calcutta <i>Sicca</i> Rupee ..	176 grs.	16 grs.	192 grs.
Furruckabad Rupee ..	165 „	15 „	180 „



The calculation of produce of bullion at the Mints of Saugor and Calcutta would be made, as before, subject to the duty or seigniorage of 2 per cent. : and in the case of bullion below dollar standard or more than 6 dwts. worse, subject to a further mint charge for refining. Gave a Table for the assay of silver.

Laid down the following standards of weights :—

Tola or *sicca* weight 180 grs. Troy

8 Ruttees=1 Masha=15 Troy grains.

12 Mashas=1 Tola=180 Troy grains.

80 Tolas (or *sicca* weight)=1 Seer= $2\frac{1}{2}$ lbs. Troy.

40 Seers=1 Mun or *Bazar* Maund=100 lbs. Troy.

(Repealed by Act VIII of 1868.)

CHAPTER XII

MISCELLANEOUS

Registration

The first legislation regarding registry of Wills and certain kinds of deeds, was Regulation XXXVI of 1793 : but registration offices were not established in the districts till 1803. Regulation XVII of this year stated the object as—"to give security to the titles and rights of persons purchasing or receiving such property in gift, or advancing

money on the mortgage of it, or taking it on lease, or other limited assignment ; to prevent individuals being defrauded by buying, receiving in gift, or lending

money on mortgage lease, etc." Registration of leases and limited assignments, wills and authority for adoption, was left optional to the party : and registration of other kinds of transfers of real property was made obligatory. The Registrar of the *Dewany Adalat* was the Registrar of deeds, and a uniform fee of Rs. 2 was prescribed.

Registrars of
Zilla and City
Courts, in charge of
registration of
deeds in 1803.

This fee was to be the perquisite of the Registrar, including his establishment.

The registration fees were revised in 1824.

In 1832 (Reg. VII) Principal *Sadar Ameens* were authorised to register deeds ; and later, Act XXX of 1838, provided for a separate registration establishment. One special feature in the Regulations on this subject was a provision in 1812, by which special registration of indigo-engagements was enjoined.

Principal *Sadar Ameens* authorised in 1832.

*Court of Wards*

2. A Regulation, dated the 15th July, 1791, laid down that where proprietors, *i.e.*, zemindars and independent *talookdars* with whom a settlement of land revenue was effected directly by Government, were found to be "disqualified" on account of age, sex, minority, infirmity, etc., their estates might be taken over for management by Government. Section 8(5) of Regulation I of 1793 laid down that estates of such persons were not to be liable to sale for arrears of revenue, being under the management of Government itself. This led to the constitution of a Court of Wards in the Board of Revenue, with control over such management; and Regulation X of 1793 laid down the detailed rules for appointment of managers, and for the Collectors of districts being in direct charge.¹

An interesting provision in this Regulation was that when the Collector intended to take over charge of an estate, on the proprietor being considered disqualified "on the ground of contumacy, notorious profligacy or bad character," the matter was to be enquired into by the Zilla Judge or the Provincial Court of Appeal and a report submitted to the *Sadar Dewany Adalat*. The final order of the Governor-General in Council, whether the estate would be taken over by the Court of Wards or not, would be based on the finding of the *Sadar Dewany Adalat* as to "whether the stated ground of disqualification be well-founded or

Where disqualified for contumacy, *Dewany Adalat* to enquire, dis- etc., to

Repealed in 1796.

¹ The question of management by the Court of Wards was mixed up at this time with the question of permanent settlement with such disqualified persons: see section 20 of Regulation VIII of 1793. When permanent settlement was suspended for these reasons and the estate taken under the direct management of Government, a permanent settlement was to be concluded according to the provisions of Regulation VIII of 1793 on the restoration of the estate to the proprietors: section 5 of Regulation VII of 1796.

not." This provision was repealed by Regulation VII of 1796.

Similar Court of Wards was established in the Ceded Provinces in 1803, in the Conquered Provinces in 1805 and in Benares in 1822. There was no other special Regulation relating to Court of Wards.

Extension to C & C. Provinces and Benares.

Land Acquisition

3. The first and the only legislation during the Regulation period, regarding acquisition of land for public purposes was Regulation I of 1824.¹ Prior to this, lands were taken presumably by arrangement with the owners. So long as the revenue or rent assessed left little margin of profit, it was more or less a question of abatement of that revenue or rent, proportionately. But when later on, landed property acquired a market-value, it was realised that mere abatement of revenue or rent did not represent the loss to the owner, and the question of determining the amount of that loss, thus arose.

Only Regulation I of 1824.

The provisions in the Regulations lacked details, but the fundamental principle that compensation should be paid to all persons interested, valuing the land in its totality, as if it was *lakheraj* or free from revenue, was recognised. It was also laid down that on the taking of the land under the Regulation, and on determination of compensation according to it, no dispute touching the property, nor "any flaw in the title of the party by or whom it may be transferred to Government, * * shall be allowed

Broad principles recognised.

¹ For an account of subsequent legislations regarding compulsory acquisition of land, see the "Introduction" in the author's "Land Acquisition Acts and Principles of Valuation."

to defeat or disturb the title acquired by Government." Claimants disputing payment of the compensation money might litigate amongst themselves in the *Dewany Adalat*, i.e., as regards the division of that money.

The procedure was that if the party's demand of compensation was such as the Government could not accept, the amount was to be settled by arbitrators, two to be chosen by the party and two by the Judge or Magistrate or Collector of the district. The award of the arbitrators was final and was not liable to be "reversed or altered unless the same shall be open to impeachment on the ground of corruption or gross partiality, or shall extend beyond the authority given to the arbitrator, and such ground of impeachment shall be established on a regular suit in the *Adalat*."

Procedure
arbitrators.

of

Emigrants

4. A Regulation of 1812 authorised the Governor-General in Council to remove objectionable emigrants who came from Arrakan. Regulation IX of 1822 provided for the jurisdiction of Courts over foreigners purchasing land or "hiring" for more than six months, and residing in the Company's territories.

Emigrants from
Arrakan.

Jails

5. The Regulations placed the jails under the superintendence of the Magistrates: and the Jail at Alipore under the control of the *Sadar Nizamat Adalat*. Regulation II of 1834 moderated corporal punishment in jails.

Magistrate to
superintend Jails.

Hidden Treasure

6. A Regulation passed in 1817 laid down the procedure in case of finds of gold, silver or bullion buried in the earth. Any person discovering such hidden treasure, was required to give notice within one month, to the Judge of the Zilla Court, who would then make an enquiry inviting claims. If the Government had a claim, the Collector was to prefer it to the Judge. The disposal of the treasure would then follow the adjudication of the Judge. If the claim of any individual or of the Government was established, the finder would be re-imbursed of all expenses, and also awarded a suitable compensation for the discovery. If no such claim was preferred or established, the Court was to adjudge the treasure to the person who had discovered it, subject to this limitation that when the value was above rupees one lakh, the excess would be put at the disposal of Government. The finder was, however, not entitled to any of these benefits, if he did not give the required notice to the Judge.

When finds of gold, etc., to vest in Government.

Printing Presses

7. Licenses for Printing Presses were required by Regulation III of 1823. It is interesting to note that the object for this as stated in the Preamble, was that it might be considered proper to prohibit the circulation of particular newspapers,¹ printed books, etc.

Licenses required for printing presses.

¹ The earliest newspaper in Bengali was published by the Baptist Mission at Serampur, in 1818. For many years the vernacular press was limited almost exclusively to theological matters. Hunter's "Indian Empire," page 569.

*Commercial Residents and Agents*

8. The most noticeable feature of the earlier Regulations relating to Commercial Residents and Agents of the Company was that special facilities were sought to be afforded to these persons so as to enable them to secure their supplies direct from the producers.

Special advantages given to Commercial Residents & Agents.

At first the officers of Government could carry on trade on their own account.

A feeble attempt was made by Warren Hastings to stop this practice, but it was not stopped till the time of Lord Cornwallis. The Company had, however, under their Charters, the entire monopoly of Indian trade : and those of their servants who were entrusted with their commercial investments, thus constituted a separate set of persons working in the interior of the country, not as responsible Government officers, but as Commercial Residents or Agents on behalf of the Company. Regulation XXXI of 1793 required that public officers, zemindars and others were not to behave with them with disrespect, but should afford them every assistance for the protection of persons employed by them.

The practice with these Commercial Residents and Agents was that they engaged directly with the producers, such as the weavers, silk-winders and others, for the supply of specified quantities at the agreed prices, either on payment of advances, or otherwise. The Regulation laid down that such persons were not to sell their products on any account to other persons ; and should they do so they were liable to forfeit all the produce so sold, and pay all costs. To ensure full dependence of the producers, the Commercial Residents were given the power to settle claims by other people against the producers engaged by them, and the processes of the Courts were required to be served or executed through the Residents. The

Residents could also use the public *Dák* (post) free of charge.

The Regulation prohibited use of compulsion, and complaints might be investigated by the *Dewany Adalat*.

Much may be and has been said against these special privileges. In the absence of any competing purchaser, the producers could have little choice in the price, and Macaulay's observation that the Company's men purchased cheap and sold dear, though referring to an earlier period, did not cease to have a meaning altogether. What the Commercial Agents attempted to do was to deal directly with the producers, collect the products and carry them to Calcutta for exportation, free from internal custom. Nevertheless, their organisation which gave a direct incentive to the producers, and provided a ready market for their products, had a beneficial effect on those industries of the country in which the Company on their commercial side was interested. Thus for a time there was rapid development in the manufacture of Salt, Sugar, Tobacco, etc., and in the industries of Weaving, Silk-winding and Embroidery.

The Company's monopoly in trade ceased with their Charter of 1813. The provisions in the Regulation of 1793 gradually fell into disuse : and eventually they were rescinded by Regulation IX of 1829. The reasons stated in the Preamble to this Regulation were that the circumstances which necessitated these provisions in 1793, no longer existed, and that it was accordingly "deemed expedient, in order to remove any appearance of favour and preference" to leave the Commercial Residents and Agents for the Company, "to follow the same process of law in the enforcement of contracts in their dealings with the natives of the country as individual traders."

Ceased after 1813,
ultimately in 1829.

Indigo

9. Regulation XXXIII of 1795 referred to the cultivation of indigo in Benares; and the first Regulation relating to indigo grown in Bengal was Regulation VI of 1823. But indigo factories by Europeans had been started in Bengal (Jessore and Nadia) much earlier. The first factor was perhaps Mr. Bond who established a *Kuthi* in 1795 in Jessore. Other factors followed. Their method was to engage with the cultivators, binding the latter to supply indigo-plants. For this purpose they often took intermediate leases from the zemindars, which brought them, as landlords, into direct relation with the raiyats. Shortly after the passing of the *Patni* Regulation VIII of 1819, many of them took *Patni* leases, by paying high premium and thus secured a permanent authority over the tenantry. Regulation VI of 1823, gave the indigo-factors a further hold upon the cultivators when the latter took advances from them. The Regulation did not purport to be one bearing on the relationship of landlord and tenant, where such happened to be the case; but it laid down generally that where an advance had been received by a raiyat for cultivation of indigo, the person advancing should be considered as having a lien or interest in the indigo plant produced on the land. Yet a more rigorous provision was made in 1830 (Regulation V) which gave large powers, even of criminal prosecution, to the factors when a cultivator failed to cultivate or supply the indigo stipulated. The result was widespread discontent amongst the peasantry.

The most objectionable parts of this Regulation of 1830, were repealed by Acts XVI of 1835 and III of 1857; but the unrest already created grew to serious proportion, and came to be known as the *Nil Bidroha* (Indigo-revolt) in Bengal. A declaration dated 20th February, 1859, by Ashley

Eden, that no raiyat could be compelled to cultivate indigo,¹ allayed the situation to a great extent. The *Nil Kuthis* are now extinct, but the Regulation of 1823 and one section of the Regulation of 1833, are still in the statute-book.

Invalided Native Soldiers

10. The special feature of the earlier Regulations regarding invalided native soldiers was that they were provided with lands at advantageous terms (see Synopsis). Later, money-pensions were substituted.

Troops and Armed Guards

11. There were two Regulations, one in 1806 and the other in 1825, providing for facilities of supply to troops on march through the country. Both the Regulations are still in force. See also paragraph 20 of Chapter XIII.

Prince of Wales Island, Singapore and Malacca

12. Three Regulations (see Synopsis) dealt with Prince of Wales Island, Singapore and Malacca, mainly with reference to trading.

Covenanted Civil Servants

13. The covenanted civil service, later called the Indian Civil Service, was constituted in 1793, along with the many reforms of that time. Previously, the writers, factors and merchants of the East India Company held the various civil offices in the administration. Abuses were grave,

Established
1793.

¹ He was then Magistrate-Collector, and later became Lieutenant-Governor as Sir Ashley Eden. It was due to his great popularity that his word had such effect upon the cultivators as well as the Indigo planters.



particularly when these officers were also individually concerned in trading and private business connections with the native traders and other inhabitants of the country. Warren Hastings made a feeble attempt to mitigate the evil effects; but it was ineffective. There was a strong feeling in England that the civil service should be independent of the trading concerns of the Company. But the solution arrived at in the Charter Act of 1793 was not altogether satisfactory. It maintained

Nominations by the Directors of the Company. the patronage of the Directors, and appointments were to be made on nominations by them. The Act, however, reserved, as a precaution against jobbery, the principal offices in India to the members of this service. These members were required to enter into a covenant that they would not trade, or receive presents, and that they must subscribe for pensions. The service hence came to be known as the "covenanted service." In India, Lord Cornwallis promulgated simultaneously his Regulation XXXVIII of 1793, prohibiting covenanted civil servants from lending money to zemindars and other landholders.

Haileybury College, 1805. There was no provision for a preliminary training before appointment, and Lord Wellesley established a College at Fort William for a course of study in Indian languages and law. This was disapproved by the Court of Directors, and in 1805 a College was established at Haileybury for a preliminary training before an officer proceeded to India.

Further Regulation to stop abuses. From a recital in Regulation VII of 1805 it seems that inspite of the general terms in the covenants, certain officers were permitted to engage themselves in commercial transactions, and a Regulation, as late as 1823, shows that

covenanted civil servants did not altogether cease to have monetary transaction with native officers. The Regulation, therefore, laid down a penalty when a covenanted civil servant had monetary transaction with any native officer.

But nominations to the civil service remained a gift to the Directors of the Company throughout the Regulation period, and for good many years thereafter also. It was not till 1853 that by an Act of the Parliament, this gift was withdrawn, and the appointments were thrown open to public competition.

Nominations by
Directors cease in
1853.

Codification of Regulations

14. The forming of all Regulations into a regular code, numbered serially and by year, commenced in 1793 ; and the plan laid down in Regulation XLI of 1793 continued in force throughout the Regulation period. The plan in this Regulation was endorsed later by an Act of Parliament in 1797 (37 Geo. III, C. 142).

APPENDIX TO CHAPTER XII

SYNOPSIS OF REGULATIONS RELATING TO MISCELLANEOUS SUBJECTS

Registration

Regulation XXXVI of 1793—established a Registry for Wills and Deeds for the transfer or mortgage of real property. *Kazis* preparing and attesting deeds.

[Partly repealed by Regulation XX of 1812, and Acts XXX of 1838, IX (B.C.) of 1862 : and wholly by Act XVI of 1864. See also Act XI of 1851.]

Regulation XVII of 1803—established an office for the registry of deeds in each zilla; the Registrar of the *Dewany Adalat* in the zilla, to be the Registrar of deeds, and to receive Rs. 2 for every deed from the party for his remuneration: for a copy Re. 1.

Documents required to be registered were :—

- (1) Sale or gift or mortgage of lands, houses and other real property (obligatory) : also discharge of mortgages (obligatory).
- (2) Leases of above or temporary transfer of real property (optional).
- (3) *Wusseatnamahs* or Wills (optional).
- (4) Written authority to wife for adoption (optional).

Parties required to sign the copies made in the Register.

Every leaf of the Register was required to be attested by the Judge: but this provision was repealed by Regulation XX of 1812.

(Extended to the Ceded and Conquered Provinces by Regulations VIII of 1805: modified by Act XXX of 1838, and repealed by Act XVI of 1864.)

Regulation XX of 1812—modified Regulation XVII of 1803: also established a Register of engagements for the delivery of Indigo.

(Modified by Act XXX of 1838 and repealed by Act XVI of 1864.)

Regulation IV of 1824—detailed rules: registration fees.

(Modified by Regulation VII of 1832 and Act XXX of 1838; and repealed by Act XVI of 1864.)

Court of Wards

Regulation X of 1793—constituted the Board of Revenue as the Court of Wards for estates of Proprietors when

the management was taken over by Government : Collectors to be in direct charge of such management : rules for the appointment of managers.

[Partially repealed by Regulations VII of 1796, and Act XXXV of 1858. As regards age of majority, see Regulation XXVI of 1793. Wholly repealed by Act IV (B.C.) of 1870.]

Regulation VII of 1796—repealed such portions of Regulations VIII and X of 1793 as excluded proprietors from the management of their lands on grounds of contumacy and profligacy.

(Repealed by Act VIII of 1868.)

Regulation V of 1799—This Regulation permitted the executors appointed by a Will to take charge of a deceased's estate without any application to the Judge of the *Dewani Adalat* : and similarly permitted the guardian or nearest of the heir, when a minor, to take charge of the estate without such application. These and other provisions in the Regulation, not to apply where the heir of the deceased was a disqualified landholder subject to the superintendence of the Court of Wards.

Regulation LII of 1803—established similar Court of Wards in the Ceded Provinces.

(Extended by Regulation VIII of 1805 to the Conquered Provinces and the territory ceded by the Peshwa and to Benares. For Benares, see also Regulation VII of 1822. For repeals, see Acts XXXV of 1858 and XIX of 1873.)

Regulation VII of 1822—Section 34 authorised the Collector to take charge of lands and premises in case of disputes and where "the fact of previous lawful possession cannot be ascertained," and manage it under the orders and discretion of the Board of Revenue.

Regulation V of 1827—provided that the Zilla Courts might issue precept on the Collector to take charge of

the management of landed property of a deceased person, pending final disposal of suit amongst disputing claimants, *i.e.*, instead of appointing an administrator *ad litem* (*vide* sections 5 and 6 of Reg. V of 1799 and 16(5) and (6) of Reg. III of 1803).

Land Acquisition

Regulation I of 1824—provided for settlement of the amount of compensation to be paid to owners and others for land required and taken for the construction of public road, building, canal, drain, jail or for any other public purpose : provided for such settlement by arbitrators, two on behalf of Government and two of the party.

(Repealed by Acts VI of 1857 and VIII of 1868.)

Emigrants

Regulation XI of 1812—The Preamble recited that natives of Arrakan (Mughs) were establishing in parts of the district of Chittagong, and were creating disturbances with the Government of Ava with which and the British Government there were relations of amity. The Regulation gave authority to the Governor-General in Council to remove such emigrants to such parts of the country as he might deem most convenient : and to retain the leaders under restraint : provided for special punishment for those or their descendants, causing disturbances.

Regulations V of 1809, VIII of 1813 and I of 1822—laid down that native subjects of the British Government, committing crimes or misdemeanours outside the British Provinces, were amenable to the jurisdiction of the Magistrates under the Regulations : and for such jurisdiction classified the persons amenable as :—

(1) natural born subjects of the British Government ; (2) natives of India becoming subjects by conquest,

annexation or cession ; and (3) natives of foreign States in the civil or military service of the British Government.

(Amended by Regs. IX of 1822 and VIII of 1829, and repealed by Act I of 1849.)

Regulation IX of 1822—Foreigners from other States, residing in the Company's territories, on purchasing land or " hiring " for any period exceeding six months, amenable to jurisdiction of the Magistrate.

(Repealed by Act I of 1849.)

Jails

Regulation XIV of 1816—relating to management of Jails under the superintendence of the Magistrates : Alipore Jail under the control of the *Sadar Nizamat Adalat*.

[Repealed by Acts XVII of 1862, II (B.C.) of 1864, VIII of 1868 and XXVI of 1870.]

Regulation XVII of 1816—had sundry rules relating to Jail establishment.

[Repealed by Act II (B.C.) of 1864.]

Regulation II of 1834—moderating corporal punishment in Jails.

[Repealed by Act XVII of 1862 and Act II (B.C.) of 1864.]

Hidden Treasure

Regulation V of 1817—declared that any hidden treasure consisting of gold or silver coin, or bullion, or of precious stones or other valuable property, found buried in the earth or otherwise concealed, and not claimed by any owner after due notification, through the Judge of the Zilla Court, would belong to the finder up to value of rupees one lakh : excess, to Government. If there was any claim, the Zilla or City Judge was to adjudicate. If

the finder did not so notify, the find was liable to confiscation to the Government.

(Repealed and replaced by the Treasure Trove Act VI of 1878.)

Printing Press

Regulation III of 1823—Previous license from the Governor-General in Council required : else liable to fine up to Rs. 1,000 or imprisonment.

Punishment for wilful circulation of prohibited paper. The Preamble simply stated—"whereas it may be judged proper to prohibit the circulation * * * of particular newspapers, printed books or papers of any description."

(Repealed by the Printing Presses Act XI of 1835.)

Commercial Residents and Agents

Regulation XXXI of 1793—Objects stated in the Preamble :—(1) preventing manufacturers or other persons in the employment of the commercial concerns of the Company, embezzling the money advanced to them or disposing of the goods provided with it, to individuals : (2) ensuring the delivery of goods agreeable to the engagements of such persons, and (3) guarding against use of compulsion on persons to work for the Company. The Regulation thus provided that all engagements with weavers were to be in writing, with option of the party to relinquish with a fortnight's notice : weavers taking advance or otherwise engaging, "shall on no account give to any other person or persons whatever, European or native, either the labour or the produce engaged to the Company" : on acting to the contrary, the Commercial Resident might "place peons upon" such weaver : and if this was of no effect then prosecute him in the *Dewany*

Adalat where the penalty was to be forfeiture of all the produce of the cloths so sold and costs.

Failure to deliver the stipulated quantity of cloth was liable, on suit to the *Dewany Adalat*, to penalty of the value of the quantity so defaulted, besides the advance taken.

List of weavers employed to be hung up at the Collector's *Kutcharree* : public officers, zemindars and others not to behave with disrespect to the Commercial Residents or their officers : they were to afford them every assistance for the protection of the weavers and other persons employed by the Company.

Any person claiming rent or money due from a weaver or other manufacturer engaged by the Company, or the officers employed by them, might in the alternative of civil suit, state his claim in writing to the Commercial Resident who would arrange for the satisfaction of the claim, without interruption of the work of the weaver or manufacturer.

Summons of the Court on the weavers or other persons, and officers employed by the Commercial Agent, were to be served through the Commercial Agent who would arrange for the attendance of such persons without interruption of their work. So also if such persons were charged before the Magistrate with a bailable offence.

The rules regarding weavers to apply to the manufacturers and other persons employed in the provision of raw silk and of the other articles of the Company's investment.

Commercial Residents to keep carefully separate accounts of the transactions with the Company's investment, and those with their own.

Commercial Residents and their Agents liable to be sued in the *Dewany Adalat*, if they used compulsion. Such persons to defend their own suits, unless the act

was under any special order of the Board of Trade or the Governor-General in Council.

Commercial Residents permitted to forward instructions to their *Vakeels* by the *dák*, free of postage.

(Main provisions extended to Opium Department by Regulation XIII of 1816 : partly repealed by Regulations XX of 1817 and IX of 1829, and wholly by Act VIII of 1868.)

Regulation XXXVII of 1803—Similar provisions for the Ceded Provinces. Extended to the Conquered Provinces by Regulation VIII of 1805.

(Repealed by Regulation XX of 1817, IX of 1829, and finally by Act VIII of 1868.)

Regulation IV of 1805—Similar provisions for the Province of Benares.

(Modified by Regulation IX of 1829 : repealed by Act VIII of 1868.)

Regulation XX of 1817—*Darogahs* of Police not to observe the special rules for their processes laid down in Regulation XXXI of 1793, in non-bailable cases. See page 154 *ante*.

Regulation X of 1825—Commercial Residents, etc., prohibited from engaging in commercial transactions in partnership with others.

(Repealed by Act VIII of 1868.)

Regulation IX of 1829—The Preamble stated that the reasons for which special provisions were made in Regulation XXXI of 1793 did no longer exist and “it has accordingly been deemed expedient, in order to remove any appearance of favour and preference,” to leave the Commercial Residents and Agents for the Company, “to follow the same process of law in the enforcement of contracts in their dealings with the natives of the country as individual traders.”

All the provisions in Regulation XXXI of 1793, excepting those which related to processes *against* Commercial Residents and Agents, were rescinded, and such persons made amenable to Civil and Criminal Courts as British subjects.

Native workmen and other persons, weavers, silk winders, etc., in the employment of the Commercial Residents to be subject to the ordinary processes of the Civil and Criminal Courts.

Copies of complaints in suits against Commercial Residents, etc., for their official acts to be sent to the Board of Trade.
(Repealed by Act VIII of 1868.)

Indigo

Regulation XXXIII of 1795—repeated the previous rules relating to cultivation and manufacture of Indigo on behalf of or by Europeans who were permitted to reside in Benares.

(Repealed by Regulation VIII of 1868.)

Regulation VI of 1823—laid down a procedure for summary suit against cultivators failing to perform indigo contracts, in lieu of regular suit.

The Regulation laid down that “if any person shall have given advance to a raiyat or other cultivator of the soil under a written engagement stipulating for the cultivation of indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself or at a specified factory or place, such person shall be considered to have a lien or interest in the indigo plant produced on such land.”

The summary process was to be like a summary rent-suit, and the relief would be to the extent of the amount of advance with interest thereon and costs: except that where fraud or dishonest dealing was established, penalty up to three times the sum advanced might be imposed.



(Extended to Orissa, Behar, Benares and Ceded and Conquered Provinces by Regulation V of 1824. Partially repealed by Acts X of 1836, VII of 1870 and XVI of 1874 : otherwise is in force.)

Regulation V of 1830—"Whereas the rules contained in Regulation VI of 1823 * * * for enforcing the execution of contracts relating to the cultivation and delivery of indigo plant have been found in a great measure ineffectual," section 3 of this Regulation laid down that persons who might have received advances and engaged for cultivation of indigo, and who "without good and sufficient cause shall wilfully neglect, or refuse to sow or cultivate the ground specified in the agreements, shall be deemed guilty of a misdemeanour, and on conviction before a Magistrate or Joint Magistrate, shall be liable to imprisonment for a period not exceeding one month," and for subsequent conviction—two months. When such conduct was instigated by another, the latter as well as the raiyat, was to be jointly and severally liable for the full amount of the penalty (specified in the original agreement) for such default.

(Repealed by Acts XVI of 1835, III of 1857 and VIII of 1868).

Section 5 of the Regulation provided for a summary procedure by the Zilla and City Judge, for releasing a raiyat from further obligation on settlement of his account on the expiration of the period of his contract. This provision is still in force.

Invalided Native Soldiers

Regulation XLIII of 1793—"Justice and policy requiring that the *Jaagir* establishment for invalids should be put upon such a footing as to render it productive of the benefits originally expected to result from it,"—this Regulation provided allotment of land from the waste and

untenanted areas of a zemindar's estate in Bhagalpore, Behar proper, Shahabad, Tirhut and Sarun in the following manner :—

Rent-free during their lives.

On their death, their heirs on rent equal to one-tenth of the produce—for the first five years, and two-thirds thereafter, not liable to further variation.

Quantities of land :—for a Subahdar—100 bighas : for a Jamadar—50 bighas : for a Havildar—30 bighas : for a Naik—25 bighas : and for a Sepoy—20 bighas.

Same rules when land was given from Government estates.

Disputes or misconduct of magnitude to the prejudice of good order, in which an invalid soldier might be complained against, was to be tried by Courts Martial. Heinous offences to be sent to the Magistrate.

(Modified by Regulation LVI of 1795 ; partially repealed by Regulation I of 1804, and wholly by Act XXIX of 1871.)

Regulation XLIII of 1795—Similar rules, but with larger areas for land-grants, for invalid native troops then at Monghyr.

(Repealed in part by Regulations LVI of 1795 and I of 1804, and wholly by Act XXIX of 1871.)

Regulation LVI of 1795—Modified Regulation XLIII of 1793 so that heirs might enjoy rent-free for ten years, if the invalided soldier died within this period.

(Repealed by Regulation I of 1804.)

Regulation I of 1804—provided for option of pension at certain rates in lieu of land : Subahdar—Rs. 18, Jamadar—Rs. 7, Havildar—Rs. 4-8-0 and so forth.

(Partially repealed by Regulations XI of 1806 and II of 1811, and the Pensions Act XXIII of 1871, and finally by Act XXIX of 1871.)

Regulation XI of 1808—laid down certain rules for the adjustment of rents payable by heirs for lands originally taken by invalided soldiers.

(Repealed by Act XXIX of 1871.)

Regulation II of 1811—further rules for the support of Native commissioned and non-commissioned officers.

(Repealed by Act XXIII of 1871.)

Regulation XI of 1813—modified some of the rules relating to payment of pensions to invalided native soldiers ; and accounts.

(Repealed by the Pensions Act XXIII of 1871.)

Regulation XII of 1814—exempted pensions to invalided soldiers from seizure, attachment or seizure by any process of the Court.

(Repealed by Act VI of 1849 : see also the Pensions Act XXIII of 1871.)

Troops and Armed Guards

Regulation XI of 1806—For facilitating the progress of detachment of troops through the Company's territories—landholders, farmers, tahsildars, etc., required to provide the necessary supplies, and to make any requisite preparation of boats or bridges, etc., without impediment or delay : Collector to depute a native officer to accompany the troops for the purpose of aiding in procuring necessary supplies, etc. Supplies furnished to be paid for by the Officer Commanding the detachment.

Zemindars, farmers, tenants, etc., entitled to compensation for damages done to land.

Provided for military guards when necessary for convicts (same as in the Ceded and Conquered Provinces by Regulation VIII of 1805) : procedure in such cases. Provision for permanent armed guards.

Police officers to assist military officers, whether they accompanied a detachment or not.

The Regulation with some minor amendments, is in force.

Regulation VI of 1825—Zemindars and others neglecting to provide supplies or assist as required by Regulation XI of 1806, liable to fine up to Rs. 1,000 on summary enquiry by the Collector : appeal to Board of Revenue.

The Regulation is in force.

Prince of Wales Island, Singapore and Malacca

Regulation IV of 1831—superseded section 11 of Regulation V of 1830 of the Penang Code regarding retailing wine or European spirituous liquors within the settlements of Singapore, Prince of Wales Island and Malacca, in quantities less than three gallons, etc. Liable to prosecution and fine by Magistrate for violation.

(Repealed by Regulation X of 1833 and Act XIV of 1851.)

Regulation III of 1833—"The import and export of goods to and from Singapore and Malacca having been declared by the Hon'ble Court of Directors to be free from all duties and all collections of those hitherto levied at Prince of Wales Island having been superseded by the same authority," this Regulation established an Office of Registry of Imports and Exports at each of these places, for a record of all vessels and of goods imported or exported, and for grant of permits.

Regulation XI of 1833—modified Regulation VII of 1830 of the Prince of Wales Island, etc., Code, and provided for licensing of pawn-brokers, and control of receivers of goods suspected to be stolen, in this Island and Singapore and Malacca.

(Repealed by Act XL of 1850.)

Covenanted Civil Servants

Regulation XXXVIII of 1793—prohibited covenanted civil servants from lending money to zemindars and other landholders : also prohibited Europeans of any description holding possession of land mortgaged to them or purchasing or renting lands without the sanction of the Governor-General in Council. (The latter part was repealed by Act VIII of 1868 : rest in force.)

Regulation VII of 1805—"Whereas covenanted civil servants of the Company, employed in offices in which they are permitted to engage in commercial transactions on their own account," might be transferred to offices which did not permit such employment, this Regulation provided for relaxation of the rules in their favour so as to give them time for the adjustment of their commercial accounts.

(Repealed by Act VIII of 1868.)

Regulation VII of 1823—Covenanted civil servants in every department prohibited from borrowing money from the native officers under their authority, or persons officially accountable to them : penalties for those contravening.

(The Regulation is in force.)

Codification of Regulations

Regulation XLI of 1793—provided for forming all Regulations into a regular Code, "printed with translations in the Persian and Bengali language," to have a Preamble in each stating the reasons : to be numbered and to have concise marginal notes : annual index to be prepared, etc., etc. : new Regulation not to be made or any Regulation repealed without "due deliberation."

(Repealed by Act VIII of 1868.)

CHAPTER XIII

CHARTERS AND ACTS OF PARLIAMENT

(relating to the Company's affairs in India, up to 1833)

The first Charter for "erecting" a Company of English merchants to carry on trade in the East Indies, was granted by Queen Elizabeth, and was dated 31st December, 1600. The Company was called "the London East India Company," and later, the "Old Company." The Charter was renewed from time to time ¹ till the reign of William the Third, when a bitter controversy arose as to the propriety of restricting the trading rights to a particular Company, to the exclusion of other traders. In 1694, the Parliament itself adopted a resolution that "all the subjects of England have equal right to trade to the East Indies, unless prohibited by Act of Parliament." Thereupon, other bodies of persons ventured to embark for trading in India: and one of these, the Dowgate Association, was recognised under the name of General Society.

2. It was not, however, so much with any idealism of equal rights as with narrow sentiments of rivalry, that the controversy really arose. Conflicts threatening to disrupt the trade were thus inevitable: and in 1698 the Parliament passed an Act (9 & 10 Will. III, Cap. 44) with the object of "settling the trade to the East Indies," and establishing some definite regulations for the guidance, under the

¹ By James I in 1609; by Charles II in 1661; by James II in 1677, 1683 and 1686; and by William III in 1693.

authority of the Crown and the Parliament, of persons and associations who would undertake the ventures of this trade over the wide seas and to strange foreign lands. The Act laid down that if the persons or corporations having shares or interest in the principal stock of the General Society, agreed to unite and be so incorporated as to be one Company to carry on trade in the East Indies with

Two Companies in 1698,—the Old London Company and the new English Company trading in the East Indies.

a "joint stock," His Majesty the King might grant a Charter to it in such name as might seem suitable, provided that by September, 1698, a sum of at least £ one million was raised by subscription.

This sum having been raised, a Charter was granted to the Society on 5th September, 1698, constituting it a Company under the name of "The English Company trading in the East Indies." The term of the Charter of the London East India Company, had, however, still three years to run, and the result was that there were two rival chartered Companies trading in the East Indies, besides a few private adventurers who had embarked on the strength of the Parliament's resolution of 1694.

3. We will not go into any account of the quarrels which ensued amongst these rival trading bodies and their officers. The term of the London Company (then called the "Old Company") was further extended, but it was obvious that there should be a sort of reconciliation or union. On 22nd July, 1702, an Indenture Tripartite was made between the Crown (Queen Anne), the Old

Amalgamation of the two Companies, as the United Company, later the East India Company.

Company and the New Company, with the object of effecting a union at the end of seven years. Lord Godolphin was deputed to work out the terms, and

later by a Deed of Poll, dated the 22nd March, 1709, an amalgamation of the two Companies was agreed to. The Old Company, which had already subscribed £315,000



to the General Society, surrendered their Charters, and subscribed now a further sum of £673,000 so as to make their subscription equal to that of the New Company.¹ The amalgamated Company came to be known henceforward as the "United Company of Merchants of England trading in the East Indies," and later briefly as "The East India Company."²

4. A summary of the provisions in the Act of 1698 and the Royal Charter which implemented it, is given in the Synopsis appended to this Chapter. This Act and the Charter are important, because, although there were many material differences in later Acts and Charters, the broad plan in them for the constitution of a body of Directors (called the "Court of Directors"), for controlling the stock and the dividends thereon, and for conferring a certain amount of authority to make laws and ordinances, subsisted throughout.

An Act of 1744 (17 Geo. II, Cap. 17) extended the exclusive trading rights of the Company till March, 1780, and it was provided that if the term was determined thereafter (such determination requiring three years' notice), the Company would then have right of "trade in, to and from the East Indies, only in common with other subjects of His Majesty."

5. While this term was in force, the *Dewany* of Bengal, Behar and Orissa which the Company obtained from the Mughal Emperor in 1765, brought about a

¹ The real properties (houses, factories, forts, etc.) in India of the Old Company were valued at £330,000, and those of the New Company at £70,000; and the latter were to pay £130,000 for balancing.

² The Parliamentary recognition of this brief name came much later, in 1833, vide 3 & 4 Wm. IV, Cap. 85, section 3.



momentous change¹ in the character of their affairs in India. Hitherto, so far as regards territorial administration, they were concerned only with small towns and factories where their servants congregated; but with the *Dewany* a vast territory of over 90,000 square miles, larger than England, Scotland and Wales taken together, came to their possession, and the fates of a native population of over 20 million persons became dependent on them. The first feeling aroused in England was naturally one of bewilderment. The King of England was no party in the *Dewany Farman*, and the constitutional position of the British Parliament in relation to the Mughal Government was puzzling.² The Court of Directors at first took the *Farman* as meaning no more than the right to collect the revenues, and to appropriate for their own gain whatever remained after paying a certain amount

Changed character of the Company after the *Dewany* of 1765.

¹ The change had really commenced earlier when the revenues of 24-Parganas, Burdwan, Midnapur and Chittagong were ceded to them.

² In theory, this puzzle remained till the end of the Emperor at Delhi after the Mutiny of 1857, whereafter the Crown of England formally assumed the Sovereign right of the British territories in India. But as a matter of fact, all real powers had passed into the hands of the Company, on behalf of the Crown, when in 1772, the tribute to the Emperor was stopped, and, in 1790, the remaining stipulation in the *Dewany Farman* for the *Nizamat* management by the Nawab at Murshidabad, was also discarded.

Mr. Justice Field, while observing that the acquisition of sovereignty by the English was effected not by any single occurrence happening on a particular date, but by a gradual change, adds that "there can be no doubt that at the beginning of 1806, the Sovereignty of the Bengal Presidency had been acquired." In fixing this later time, he does not refer to the conditions in Bengal itself but to events outside. The Emperor, when rescued from the hands of the Maharattas after the battle of Delhi in 1803, had thrown himself on the protection of the English. In the mean time, the cession of certain territories from the Nawab Vizier of Oudh in 1801, purported to be in "perpetual sovereignty," and the Treaty of Bassein with the Peshwa in 1802, and the treaty with the Gwolkwar in the same year, acknowledged the supremacy of British power. The treaties with the Raja of Berar and with the Sindia in 1803 and the treaty with the Holkar in 1805, had also been dictated largely by the authority of conquest.

to the Emperor at Delhi as tribute, and a certain amount to the Nawab at Murshidabad for the *Nizamat* (administration of criminal justice), and after meeting the cost of the army they maintained. The Company enjoyed the free right of trading in the interior (claimed under the privilege granted by Furrok Sher in 1717), but

Company taking the revenues, but not spending for the civil Government :

others were subject to inland duties, and to a duty for bringing goods into the city of Calcutta. The Company did not undertake any liability or responsibility for the civil Government of the country ; and thus, in the four years from 1765 to 1769, the revenues from their possessions in Bengal, showed a huge surplus of as much as £2,539,000,¹

—hence large surplus, treated as profits.

over their expenditure in the Province. Apart from this, the servants of the Company who were permitted to trade in the interior on their own private account, with similar liberty as the Company enjoyed, made very large profits and returned home immensely rich.

6. By an Act passed in 1767 (7 Geo. III, Cap. 57), the Parliament laid a claim upon the Company for payment of an annual sum of £400,000 into the British Exchequer, for the benefit of the Crown. This claim was put as the price of the Parliament's sanction (accorded in the same Act) to the Company to retain possession of the territories acquired by them in India. These were to remain " vested " in the Company : but there was no assertion of Sovereign right, or even any pretence of responsibility to direct or regulate how the *Dewany* territories were to be administered. Yet, as subjects of the King of England, the Company needed this sanction

Parliament's claim for a share of the surplus, as price for recognition.

¹ See page 12, Introduction.



from the British Parliament¹, even though they functioned as mere *Dewan* under the Mughal Emperor.

The sanction to retain possession of these territories was first for two years; and by 9 Geo. III, Cap. 24, the period was extended by five years more, *i.e.*, up to 1774. This Act of 1769 also repeated the liability of the Company to pay £400,000 to the Crown, on account of their possessions in India. The position thus was that for retaining the *Dewany*, the Company had to pay, out of the revenues of Bengal, Rs. 26 lakhs to the Emperor at Delhi and Rs. 40 lakhs to the British Parliament.

Extension of recognition to 1774:

—and the resultant position.

7. It was, however, very soon realised that these profits could not continue long unless some form of ordered Government was established in the country. In Bengal, it was a period of anarchy, for while the Company concerned themselves only with the collection of revenue, and their servants busied themselves to make as much as they could for themselves, there was no constituted authority responsible to carry on even the most essential functions of a Government as administration of justice and protection of property. The crash came with the famine and the pestilence which occurred in 1769-70, and in which

A period of disorder: famine of 1769-70.

¹ The Company, as a body corporate, might have had a right to acquire real property in British territories; but to possess a "*Dewany*" in a foreign kingdom, subject to an annual payment to the Emperor at Delhi, was a different matter. The Company needed this sanction from the British Parliament; but the propriety of levying a price for it was controversial. Edmund Burke assailed it as mere "*greed*." The debtor was the other side, *viz.*, the Parliament, for the valuable acquisitions made by the Company in India secured so many benefits to the British people, and eventually led to the establishment of an empire which has been the brightest jewel in the Crown of England. The levy of this "*royalty*," was not, however, regular; and the provisions about it were repealed in 1813 (see paragraph 18 *post*).

over five millions of persons perished and over one-third of the cultivated lands in Bengal, was reduced into "waste and jungle." The Directors decided that they must take

Company assumes responsibilities of civil Government : Warren Hastings's plans.

over responsibilities for the civil Government of the country, and not confine themselves merely to collection of revenue ; and when Warren Hastings assumed

charge, he put into operation a tentative plan for the administration of justice and for maintenance of order. This was done not so much with a view to carrying out in a better manner the obligations which had really devolved on them with the *Dewany*, as with the object of eventually breaking the links which tied them to the Mughal at Delhi,—an Emperor then more in name than with any real power. The annual tribute

Cessation of obedience to the Mughal Emperor.

of Rs. 26 lakhs was suspended in 1770 on the excuse of the famine : but it was permanently stopped in 1772. The allowance for the *Nizamat*, already reduced in 1766, was further reduced to half in 1770, and in 1771 only the household allowance was retained. The only token of the suzerainty of the Emperor which remained, was that the coins which passed were in the name of Shah Alam ; and the only matter in respect of which the terms of the *Dewany* grant were not discarded, was that the Nawab at Murshidabad was still recognised in form as the head of the *Nizamat* or the department of administration of criminal justice amongst the native inhabitants. ¹

¹ This authority of the Nawab, ceased altogether in 1790 ; but the Emperor's name continued to be borne on all coins as late as 1833. Another striking circumstance is that all Acts of the Parliament up to that time, and in all the Regulations, the expression " His Majesty's subjects " was used as meaning the British-born subjects of the King, while the people of the country were mentioned as " native inhabitants " without anything to make it clear whose subjects they were.

8. It was in these conditions that the Regulating Act of 1773 (13 Geo. III, Cap. 63)—rightly called the First Indian Constitution under the authority of the Parliament,—was passed. It did not merely revise the constitution of the Court of Directors, and extend the Company's term of possession of the territories they had acquired by the *Dewany*, but what was most important, it assumed for the Parliament full authority to form, direct and regulate the Government of these territories, ignoring the Emperor at Delhi altogether. The Act was supplemented in 1781 by another Act (21 Geo. III, Cap. 70), the object of which was to remove certain defects in the original Act: and later in 1784, a third Act (24 Geo. III, Cap. 25) indicated, amongst other matters, the policy which the Company were to follow in their treatment of zemindars and other landholders in Bengal, Behar and Orissa. These Acts laid down the constitution of the Governor-General and Council, their powers regarding promulgation of laws and regulations, and regarding establishment of Courts with jurisdiction over the native inhabitants of the country outside the Presidency town of Calcutta. For Calcutta, and the European British subjects, the Act provided for a Court (called the Supreme Court of Judicature) with Judges appointed direct by the King. A historical account of these Courts, has been given in Chapters I to IV, and for a summary of the provisions relating to them in the Acts of 1773 to 1784, we would leave the reader to see the Synopsis appended to this Chapter.

9. The Regulating Act of 1773 permitted the Company to retain possession of their territorial acquisitions and the revenues obtained therefrom, till one year after April, 1780. An Act of 1780 (20 Geo. III, Cap. 56) extended the period to April 1781, and by 21 Geo. III, Cap. 65 the

The Regulating Act of 1773 and its supplementary Acts of 1781 and 1784.

Extensions of the Company's term after 1773.

next term was fixed for ten years terminable on 3 years' notice after March, 1791. No such notice was, however, given, and the next three extensions which the Company obtained for retaining the Government of their territorial possessions in India, were for 20 years for each term, *viz.*, from 1793 to 1813 by 33 Geo. III, Cap. 52; from 1813 to 1833 by 53 Geo. III, Cap. 155; and from 1833 to 1853 by 3 and 4 Will. IV, Cap. 85. Each of these successive Acts tended to increase the Parliamentary control over the Court of Directors, through a Board called the Board of Commissioners, and as we shall see presently, by the end of the last of the above periods, the Directors were reduced almost to a mere advisory body, all real powers having passed to the Board.¹

10. The controversy over the monopoly of trade with one particular Company was, however, never dead. In 1793, the other English traders were placated with a limited shipping to the extent of 3,000 tons a year, but otherwise the Charter Act of this year maintained the exclusive trading rights of the United Company. A violent agitation began about the year 1808, and there was a radical change of policy when the question of the next extension arose in 1813. It was then considered "expedient that from and after the 10th April, 1814, the right of trading, trafficking and adventuring in, to, and from all ports and places within the said United Company's present Charter, * * * should be thrown open to all His Majesty's subjects, in common

Company's monopoly of trade in India taken away in 1813.

¹ What remained practically vanished when the Charter Act of 1853 deprived the Directors of the valued privilege of the patronage for appointments in India, by throwing open the Civil Service entirely to competition. The number of the members of the Court was reduced to 18, six of whom were to be nominees of the Crown. Yet, they were continued in name till, after the Mutiny, the Company were altogether eliminated, and the Crown and the Parliament assumed the direct control of the Government in India.

with the said United Company " (Preamble to the Charter Act, 53 Geo. III, Cap. 155). The Company's exclusive right of trading in India thus ceased from this time. The only monopoly right permitted to them was in respect of their trade with China and the trade in tea.

11. Apart from the interest of other English traders and merchants, the cessation of monopoly right in a body which commanded at the same time the powers of the Government of the country, had the effect of securing for the Indian traders a better competitive price for all goods whether imported or exported. On the other hand another effect was that the Company had no longer the interest to continue their efforts or maintain their organisations, for the development of local industries and on Bengal's industries, as weaving and salt-manufacture in Bengal, which, with their monopoly business, had hitherto secured large profits to them. There were also other contributory causes, and the result was that these industries in Bengal gradually collapsed. The policy henceforth became the policy of the general body of English traders and the industrialists in Great Britain.

Opium was the main article of trade with China, and with the continuance of this monopoly of trade with that country, the trade in opium remained almost exclusive with the Company : and this explains to a certain extent their Opium policy during this period (see Chapter VIII, *ante*).

12. The policy of having an intermediate body as the Company, for the government of the British territories in India, vast and rapidly growing as they were, was open to grave objections at all times. It was questioned at every renewal of the Company's Charter, but more as a side-issue to the agitation by other English

Some observations relating to the continuance of the Company.

merchants against the trade-monopoly of the Company, than as an independent subject in itself. Even when Earl Grenville said in the House of Lords that—"no Sovereign ever traded for a profit; no trading company ever yet administered Government for the happiness of its subjects," he did not go beyond this. The agitation against the Company retaining the Government, thus practically ceased when the trade was thrown open to all English traders, after 1813. When by the Charter Act of 1833, the Company were divested of their commercial character and forbidden to have any trade on their own account in India, Lord Ellenborough described the Company as "mortgagees in possession," with a position which was "undignified," because all real powers had passed from their hands, and "uncomfortable," because being deprived of any advantage of trade, and assured of a good dividend in their stock, they had little to interest them in the Government of the country. Here also the fundamental question was missed. Political expediency might have been the reason¹: but the anomaly of the position and its harmful effects were realised from the beginning. Efforts made to circumvent the evils were feeble at first, but gradually the Court of Directors were brought under Parliamentary control, even in small details, through the Board of Commissioners appointed by the Crown, till, as already stated, all real powers passed into the hands of this Board.

13. The Regulating Act of 1773 first provided for a better constitution for the Court of Directors; and then for a Governor-General and Council, the first of them to be appointed by His Majesty, and later by the Company. The policies and plans of administration

How the harmful effects were sought to be prevented during 1773 to 1813.

¹ See footnote under paragraph 5 *ante*.

were, however, left entirely in the hands of the Directors. The Preamble to the Act sought to prevent the "various abuses which have prevailed in the government and administration of the Company" in India, but the only provisions made towards this end were that charges against the higher officials as the Governors, members of the Council and Judges, would be heard and tried by the King's Bench in England, and that at Fort William there would be a Supreme Court appointed by the Crown, with civil and criminal jurisdiction over all other European British subjects.

The first step taken for some control over the policies, was in 1784. The Act of this year, known as Pitt's India Act (24 Geo. III, Cap. 25) recited (in section 39) that—

Directions of policy and control in the Act of 1784. "complaints have prevailed that divers Rajahs, Polygars, Talookdars and other native Landholders within the British territories in India, have been unjustly deprived of, or compelled to abandon and relinquish their respective Lands, Jurisdictions and Privileges, or that the Tributes, Rents and Services required to be by them paid or performed * * * are become grievous and oppressive;" and then laid down that wrongs so far done must be redressed, and for the future, permanent rules must be established upon principles of moderation and justice according to the laws and constitution of India. In order that the Parliament might know what directions were given in these and other matters, by the Court of Directors, the Act required that copies of all letters or orders relating to the administration of revenue or civil or military affairs must be submitted to the "Commissioners of the Treasury or to the High Treasurer or to one of His Majesty's principal Secretaries of State."

The Act also authorised His Majesty the King to appoint a Board of Commissioners with power of superintendence and control over the affairs of India, and in particular with power to direct and control all acts of the United Company relating to civil, revenue and military matters. The Court of Directors was required to pay due obedience to, and to be governed and bound by, the orders and directions of the Board.

The Board of
Commissioners,
1784-1793:

The constitution and functions of the Board were further elaborated in the Charter Act of 1793 (33 Geo. III, Cap. 52, section 2). By this Act, the Board of Commissioners was to consist of the Chancellor of the Exchequer, two of the principal Secretaries of State, and two others selected by His Majesty. The Board was authorised to have access to the records of the Court of Directors, but the most important provision was that—"no orders or instructions whatever, relating to the civil Government or revenues of the said territorial acquisitions in India, shall be at any time sent or given to any of the Governments or Settlements in India, by the Court of Directors, until the same shall have been submitted to and approved by the said Board" (section 12). The Board was given power to "disapprove, alter or vary in substance" any of the proposals of the Court of Directors.¹ In matters "concerning the levying of war or making peace or treating or negotiating with any of the native Princes or States," the Board was empowered to issue its orders to the authorities in India through a Secret Committee of selected Directors (*i.e.*, not the general body of the Court), and the same were to be obeyed (section 19). The policy apparently was to restrict the final authority of the Directors to

—how it functioned
till 1813.

¹ The Board was, however, forbidden to interfere in the appointments in the services in India. The patronage in this respect continued in the hands of the

matters relating to their trade and commerce. The process, however, was gradual; and where the two functions interacted on each other, the approval of the Board was at first more or less formal. One instance of this is the revival of the earlier system of utilising a part of the territorial revenues for "investment" in the purchase of goods for the Company's trade,¹ which was conceded by the Board and which prevailed throughout this term (1793 to 1813) of the Company's administration.

14. The character of the Company's administration during the next twenty years was materially changed on account of the cessation of their monopoly in the trade. The Company had still their own trade, but only on level terms with the other English traders. A complete separation of their "commercial" and "territorial" accounts was effected: and the system of "investments" out of territorial revenues was automatically stopped. The industrial revolution in England which began to operate with full vigour after the cessation of the war with Napoleon had its repercussion on India. The policies regarding trade were not to be controlled by the commercial interests of the Company alone, but only in common with the other traders and industrialists in England (see 3 & 4 Will. IV, Cap. 52, 54, 55, 56 and 59 in the Synopsis).

15. More elaborate rules were laid down in the expectation of an influx of Europeans, providing for licence, and *inter alia* powers to Magistrates in the interior to try European offenders and punish them with fine up to

Directors till 1853 when all appointments in the Civil Service were thrown to open competition.

¹ During the years 1766 to 1780, the total amount of territorial revenues of Bengal thus "invested," amounted of £12,360,264 or over 12 crores of rupees. Thereafter this method of investment was suspended for some years, but was

Rs. 500. The Supreme Court's Admiralty jurisdiction was also extended to maritime crimes on the high seas. A Bishopric and several Arch-deaconries were created to minister to the European residents and the native Christian population, and the cost on their account was made chargeable on the revenues of India.

Bishopric and Arch-deaconries.

The Act of 1813 required that a provision of one lakh of rupees must be made every year, for the education of the native inhabitants. The fund was ill-managed, and for several years little or nothing was spent out of it. Yet this provision was a sign of a new outlook of the Government, which, however, did not develop further till the time of Lord William Bentinck. Excepting this, the Acts passed during this period (and they were numerous) did not show any initiative on the part of the Parliament to direct any new policy for the internal administration of the country, so far as the native population was concerned.

One lakh a year for education : mis-managed.

16. The constitution of the Board of Commissioners was not altered in 1813; but from the changed conditions, the Directors of the Company had no longer that interest in the Government which they had when they possessed exclusive trading rights. The Board had wide powers under the Act of 1793, but active functions developed in them only slowly. The Act of 1813, added some detailed rules to enable the Board to get all information and reports from the Directors within reasonable time. Payments of pension, gratuities, etc., in England were also specifically placed under their control.

The Board of Commissioners during 1813 to 1833.

revived again after 1793, though the allotments were not continuous every year. This method of appropriation of territorial revenues to commercial investments was finally stopped in 1813 when the Company's monopoly in trade also ceased.



17. The Charter Act of 1833 (3 & 4 Will. IV, Cap. 85) which terminated the Company's trade in India altogether, had the effect of transferring practically all powers of direction to the Board of Commissioners, although the Court of Directors still functioned. The constitution of the Board was materially modified. It now consisted of—(1) the Lord President of the Council, (2) the First Lord of the Treasury, (3) the principal Secretaries of State, and (4) the Chancellor of the Exchequer, as *ex-officio* Commissioners; and (5) other persons as might be appointed by His Majesty (sections 19-20). Any two of the Commissioners might form a Board for executing the several powers under the Act (section 21). Only the President of the Board received a salary (section 23), and what happened in practice was that it was the President who really gave the directions; and eventually he became the sole responsible member. The previous Acts had provided that any order relating to the civil and military Government or the revenues, required the approval of the Board. The Act of 1833 made an addition that orders relating to "any public matters," besides the above, must first be approved by the Board. The Directors of the Company might make representations to the Board, but otherwise they were no better than a mere advisory body. When eventually the Company was eliminated altogether, and the Crown assumed the Government of India, the official we since know as Secretary of State for India, took the place of the President, and the Board ceased.

18. We have seen that by an Act of 1767, the Parliament laid a claim to an annual payment of £400,000 as the price for permission to the Company to retain the possession of their territorial acquisitions in India. The payment of this "royalty" was not,

The Board of Commissioners under the Act of 1833.

The "royalty" for the Parliamentary sanction to the Company's possessions.

however, regular. In the 13 years from 1768 to 1781, the total amount paid was £2,761,451 or a little over £200,000 per annum, in the average. The Act of 1781 (21 Geo. III, Cap. 85) stipulated that the amount was to be three-fourths of any surplus after a dividend of 8 per cent. per annum had been paid, and similarly a proportion was imposed by the Act of 1793 (33 Geo. III, Cap. 52). The justness of this levy was very controversial (see footnote to paragraph 6 *ante*), and all these provisions were repealed by the Act of 1813 (53 Geo. III, Cap. 155, section 61). The total amount paid under all these arrangements, from the revenues of India (mainly the revenues of Bengal), during the entire period from 1767 to 1813, amounted to £5,135,319.¹

19. A number of provisions in the main Acts, and most of the minor Acts, deal with the financial side of the Company's affairs, —their obligatory payments in India and in England, their powers to increase their capital stock or to raise loans by what were called "Bond Debts," and so forth.

(1) The salaries of the Governor-General, the Governors, the members of their Councils, the Commander-in-Chief, the Judges of the Supreme Courts and the Bishop and the Archdeacons, as well as the superannuations of these and other officers, were fixed by the Parliament, and were a charge on the territorial revenues of India. The salary of the President of the Parliamentary Board of Commissioners, and the cost of the establishment of the Board were also similarly a charge on the revenues of India. This last amount was fixed at £26,000 exclusive

¹ As submitted by the Court of Directors to the Select Committee, 1832-33 : Dr. P. N. Banerjea's *Indian Finance*, page 23.

of superannuations, by 53 Geo. III, Cap. 155, section 90. Besides these the pay of the troops recruited in England and their pensions and gratuities were also charged to the revenues of India. (See Synopsis of Acts 21 Geo. III, Cap. 65; 28 Geo. III, Cap. 8; 39 Geo. III, Cap. 109; 50 Geo. III, Cap. 87; 53 Geo. III, Cap. 155; 1 Geo. III-IV, Cap. 99; 4 Geo. IV, Cap. 71.)

The above enumeration is not, however, exhaustive. It is only illustrative to indicate the general financial policy regarding the European establishments (civil, military and ecclesiastical), in connection with the administration of India, both in India and in England.

(2) The capital stock which was permitted to be raised initially, was for £2 million. In 1708 (6 Anne, Cap. 17) a further sum of £1,200,000 was permitted to be raised for assistance in the war with France at the time. Further new stocks raised were :—

1786 (26 Geo. III, Cap. 62)	..	£ 800,000 at £160 per centum.
1789 (29 Geo. III, Cap. 65)	..	£1,000,000 at £170 per centum.
1793 (33 Geo. III, Cap. 52)	..	£1,000,000 at £200 per centum.

The total of the stock thus stood at £6 million, and the rate of dividend since 1793 to 1833 was $10\frac{1}{2}$ per cent. per annum. When the Company's commercial functions ceased in 1833, they were required to pay a sum of £2 million as a Security Fund, and a dividend of $10\frac{1}{2}$ per cent. on the Capital Stock was assured from the revenues of India, till redeemed by the Parliament after April, 1874 (or after any earlier period if the Company were deprived of the Government of India), such redemption being at

£200 for £100 stock (sections 9 to 12 of 3 & 4 Will. IV, Cap. 85).¹

(3) The first Bond Debt or loan floated by the Company was in 1708, and with the same object of enabling the Company to assist in the war with France. The amount raised was £1,500,000 (6 Anne, Cap. 17, section 2), and thereafter the Bond Debt rose gradually, and by the year 1721 it amounted to £5 million (7 Geo. I, Cap. 5, section 35). In 1744, the Company were permitted to float a further loan of £ one million to enable them to place an equal amount for the service of the Crown (17 Geo. II, Cap. 17, section 8). Consequent to the surpluses secured from the revenues of Bengal during the years 1760 to 1770 the Bond Debts were reduced to £1,500,000 (13 Geo. III, Cap. 64, section 13); but the set-back after the famine, forced a further borrowing of £500,000, and in 1793 the total stood at £2 million (33 Geo. III, Cap. 47, sections 14-15). Further increases authorised were £2 million in 1807 (47 Geo. III, Cap. 41, section 2), and another £2 million in 1811 (51 Geo. III, Cap. 64, sec. 1). Bulk of this was liquidated by annual payments, and when the commercial occupations of the Company ceased in 1833, and a financial settlement was made with them, the remaining Bond Debt in Great Britain (as well as all the territorial debts of the Company in India)² was

¹ The provision for securing the dividend, was meant to indemnify the Company for the loss of their trade. But how was the question about the continuance of their functions in the Government of India, relevant? Had these latter functions been terminated in 1833 instead of the trade of the Company, in common with other English traders, India would have been saved from this annual charge of dividend on its revenues, while there would have been an advance in the methods of administration by the 25 years which intervened between the time and the assumption of the Government by the Crown: and perhaps the Mutiny and the horrid massacres which accompanied it, would have been avoided.

² For an excellent presentation of these debts and other liabilities at the financial settlement with the Company, see "Indian Finance in the Days of

made a charge on the revenues of India. Section 9 of 3 & 4 Will. IV, Cap. 85, ran thus :—

“ And be it enacted that from and after the 22nd day of April, 1834, all the Bond Debt of the said Company in Great Britain, and all the territorial debt of the said Company in India, and all other debts which shall on that day be owing by the said Company, and all sums of money, costs, charges and expenses which after the said 22nd day of April, 1834, may become payable by the said Company in respect or by reason of any covenants, contracts or liabilities then existing, and all debts, expenses and liabilities whatever, which after the same day shall be lawfully contracted and incurred on account of the Government of the said territories, and all payments by this Act directed to be made, shall be charged and chargeable upon the revenues of the said territories ; and neither any stock or effects which the said Company may hereafter have to their own use, nor the dividend by this Act secured to them, nor the Directors or proprietors of the said Company, shall be liable to or chargeable with any of the said debts, payments or liabilities.”

20. The Charter of 1698 granted to the Company, the power to “raise, train and muster military forces necessary for the defence of (their) forts, places and plantations” ; and a number of Acts (see Synopsis) dealt with this recruitment for the Company’s army¹, and also transfer

The East Indian Army.

the Company” by Dr. P. N. Banerjea, Minto Professor of Economics, Calcutta University.

¹ The nucleus of the East Indian Army may be traced to the small force which was sent out in 1662 to hold the island of Bombay for Charles II. As the possessions of the Company in India increased, they raised and maintained a force for the protection of their own factories. The first regular native army owes its origin to Major Stringer Lawrence (called “ Father of the Indian Army ”) who raised an army of Sepoys in Madras in 1748. For a fuller account see Chapter XI of Vol. IV of the Imperial Gazetteer, and the Bibliography given at its end.

of forces from the King's army to the service of the Company. The expenses, including pensions, were charged on the Company's revenues (28 Geo. III, C. 8 and 33 Geo. III, C. 52, sec. 128). The force thus recruited, consisted of 13,000 Europeans and 57,000 Indians, in 1796; and of the latter, 24,000 were in the Bengal Army. By the year 1805 (when the Maharatta War had terminated) the army was placed on a "peace footing," and consisted of 24,500 Britishers and 130,000 Indians. In 1823, the amount payable to the British soldiers and officers as pension, was fixed at £60,000 per annum (4 Geo. IV. Cap. 71, sec. 1).

Immediately before the Mutiny of 1857, the armies of the three Presidencies of Bengal, Madras and Bombay, amounted to about 280,000 persons of all arms, including 18,000, Europeans recruited by the Company, and about 24,000 of the Queen's troops who were paid by the Company while they were in India.

APPENDIX TO CHAPTER XIII

CHRONOLOGICAL SYNOPSIS OF THE ACTS OF PARLIAMENT RELATING TO THE COMPANY'S AFFAIRS, UP TO 1833

I. Period up to 1773

9 and 10 Will. III, Cap. 44 (1698)—Section 52 of this Act authorised His Majesty the King to incorporate, by Letters Patent, into a joint stock company with powers to manage and carry on trade to the East Indies, all or any corporations, or other persons, having particular shares or interests in the principal stock of the General Society or in the annuities issuing out of the fund, if they were so willing or desirous, and provided that a sum of

£2 million or a moiety thereof was subscribed on or before the 29th September, 1698. The stocks so formed to be esteemed personal estates : the annuities (dividends) issuing thereout to be exempt from taxes : and not liable to foreign attachment.

(The required sum having been subscribed before the date, the Letters Patent was issued by the Charter, dated the 5th September, 1698, the Company formed being named "The English Company trading in the East Indies.")

The Company might be given power, by His Majesty, "to make reasonable laws, constitutions, orders and ordinances from time to time, for the good government of the said trade in the East Indies and other parts aforesaid, and of the traders, factors, agents, officers and others concerned in the same, and to inflict reasonable penalties and punishments by imprisonment, mulcts, fines or amercements for any breach or disobedience" (section 67).

(The Charter of 5th September, 1698, gave these powers to the Company, with the amplification that such bye-laws, etc., were "not repugnant to the laws of our kingdom.")

Borrowing by the Company to be on common seal ; but it would not be lawful for them to borrow any sum on the credit of the fund created by the Act, *viz.*, the sum of £2 million and the dividends or annuities thereon (section 75).

Section 79 provided for the cessation of the Corporation and of the benefits of trade given, on 3 years' notice after 29th September, 1711.

(This provision was modified by subsequent Acts and Charters, and extensions were allowed from time to time.)

The Charter of 5th September, 1698, elaborated the other directions in the Act, and provided that the Company was to have perpetual succession and a common

seal: to have power to purchase lands, etc., goods and chattels: and to have power to sue, and might be sued. The Charter also required that the Company was to submit yearly accounts to His Majesty's Privy Council. The Charter also directed the constitution of a Court of Directors of the Company, consisting of 24 members, to be chosen by all members of the Company, assembled at a meeting (called the General Court of the Company): but no person to be a Director unless he held £2,000 stock.

The Charter also granted the Company the government of all forts, factories and plantations, etc., and also power to appoint Governors and Officers, and raise, train and muster military forces necessary for the defence of such forts, etc., "the sovereign right, power and dominion, over all the said forts, places and plantations, to us (the Crown) our heirs and successors, being always reserved."

6 *Anne, Cap. 17 (1708)*—provided for increasing the capital stock of the Company, and for advancing money for the use of the Crown (to carry on the War) by borrowing up to £1,200,000 in addition to the money previously borrowed on their common seal.

The date of 3 years' notice for termination was extended to 25th March, 1726.

(Amalgamation of the two Companies was effected in 1709 under the name of "The United Company of the Merchants of England trading in the East Indies," or briefly—"The United East India Company.")

10 *Anne, Cap. 28 (1712)*—continued the trade and corporation capacity of the United East India Company, although their fund should be redeemed: provided for the exclusive trade till the end of 3 years' notice after 1736: and fixed the period of redemption of the debt due from the State up to the expiration of such notice.

7 *Geo. I, Cap. 5 (1721)*—authorised the United Company to borrow money not exceeding £5 million on the

whole : forbidden to discount any bills of exchange or other bills or notes.

7 Geo. I, Cap. 21 (1721)—provided that the Company might ship out stores of War duty-free, such duty not exceeding £300 in one year.

3 Geo. II, Cap. 14 (1730)—provided that notwithstanding redemption (the amount then was £3,200,000), the Company was to continue as a body-politic, enjoying all privileges granted by Acts or Charters : not to purchase lands in Great Britain exceeding value £10,000 per annum.

17 Geo. II, Cap. 17 (1744)—Section 13 made the exclusive trade determinable on 3 years' notice after 25th March, 1780, and section 12 provided that the Company was to have the benefit of all Acts and Charters made in their favour. Section 14 laid down that after the determination of their term and of their exclusive right of trade, the Company would have "right of free trade in, to and from the East Indies" common with other subjects of His Majesty.

Authorised the Company to borrow an additional million pound and pay the same for the service of the Crown.

23 Geo. II, Cap. 22 (1751)—continued and confirmed the powers of the Company to borrow money on Bond, given by former Acts : and made provisions for reducing the amount borrowed by raising certain sums by issue of transferable annuities.

7 Geo. III, Cap. 57 (1767)—All territorial acquisitions and revenues obtained in the East Indies, vested in the Company for 2 years from 1st February, 1767 : £400,000 to be paid annually to the Crown.

9 Geo. III, Cap. 24 (1769)—confirmed the Company in the possession of territory and revenues previously granted, for 5 years from 1st February, 1769 : and also

repeated the provision for payment of £400,000 to the British Exchequer for a limited time, in respect of the territorial acquisitions and revenues in the East Indies.

10 Geo. III, Cap. 47 (1770)—Company's servants in the East Indies guilty of oppressing any of His Majesty's subjects, to be tried by the Court of King's Bench in England : procedure therefor.

II. *Period from 1773 to 1793*

13 Geo. III, Cap. 63 (1773)—This was an Act "for establishing certain regulations for the better management of the Affairs of the East India Company, as well in India as in Europe,"—commonly called The Regulating Act of 1773. The Preamble to the Act recited that the powers and authorities granted by the Charters had been found "not to have sufficient force and efficacy to prevent various abuses which have prevailed in the government and administration of the said United Company."

Court of Directors—6 for one year, 6 for two years, 6 for three years and 6 for four years (*i.e.*, instead of all 24 being for one year) : no "proprietor" with stock less than £1,000 to vote : "proprietors" with stock £3,000 to have two votes : those with £6,000 to have three votes : and those with £10,000, four votes (Preamble and sections 2 to 4).

*Governor-General and Council*¹—Appointment of and powers : the Governor-General and Council to have also the power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencolen : Presidents at these Presidencies not to have power to declare or make war without the

¹ For further provisions regarding salaries of the Governor-General and members of his Council, see 3 & 4 Wm. IV, Cap. 85 (1793) *post*.

consent and approbation of the Governor-General and Council, which latter were to be the Supreme Government: the Supreme Government to obey the orders of the Court of Directors, and supply all intelligence to them. Governor-General and Council to make from time to time—"such rules, ordinances and regulations, for the good order and civil government of the said United Company's settlement at Fort William aforesaid and other factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable (such rules, ordinances and regulations not being repugnant to the laws of the realm), and to set, impose, inflict and levy reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances and regulations" (section 36).

*Supreme Court of Judicature at Fort William*¹—Authority given to His Majesty the King to "erect and establish a Supreme Court of Judicature at Fort William," to consist of a Chief Justice and three other Judges,² being barristers in England or Ireland of not less than five years' standing, to be named by His Majesty: the said Court "to have full power and authority to exercise and perform all civil, criminal, admiralty and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers of the said Court, with such reasonable salaries as shall be approved by the Governor-General and Council³: and to form and establish such rules of

¹ Section 13 makes reference to a Charter by George II, dated the 8th January, 1753, by which Courts of Civil, Criminal and Ecclesiastical jurisdiction were established at Madras-patam, Bombay and Fort William, but which did "not sufficiently provide for the due administration of justice."

² By 37 Geo. III, Cap. 142 (1797) this Court was to consist of a Chief Justice and two Puisne Judges.

³ It is to be noticed that the salaries, etc., of the subordinate staff of the Court were to be fixed not by the Court but by the Governor-General. Section 21 of the Act next laid down that these salaries as well as the salaries fixed by the Charter for the Chief Justice and the other Judges of the Supreme Court, were to be paid by the Company, *i.e.*, from the revenues of India.

practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of justice, and the due execution of all or any of the powers which by the said Charter shall or may be granted and committed to the said Court : and also shall be, at all times, a Court of Record, and shall be a Court of Oyer and Terminer and Gaol Delivery, in and for the said town of Calcutta and factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto " (section 13).

Section 14 next explained this jurisdiction as extending " to all *British subjects* who shall reside in the kingdoms of our Provinces of Bengal, Behar and Orissa " ; and to any suit, action or complaint " against *any person* who shall, at the time when such debt or cause of action or complaint shall have arisen, have been employed by, or shall have been directly or indirectly, in the service of the said United Company or of any of His Majesty's subjects."¹ Section 16 explained that this jurisdiction might extend to claims " against *any inhabitants of India* residing in any of the said kingdoms or provinces " by *any of His Majesty's subjects* where the amount exceeded Rs. 500 and " where the said inhabitants shall have agreed in the said contract (*i.e.*, the contract on which the claim was based) that in case of dispute, the matter shall be heard and determined in the said Supreme Court."²

Servants of the Company being any of His Majesty's subjects, accused of embezzlement or breach of public trust, to be tried by the Supreme Court (section 33).

¹ This was repeated *verbatim* in the Charter which followed : and was the cause of the misunderstanding to which reference has been made in the Introduction, pages 24 to 28 *ante*.

² This was also repeated in the Charter. Such action might be either direct, or by way of appeal from any of the established Courts.

Jurisdiction not extended to any indictment or information against the Governor-General or any member of his Council : or to arrest or imprisonment of such person or the Judges (sections 15 and 17).

Section 18 permitted appeal to His Majesty in Council against any judgment or determination of the Supreme Court. The Charter which followed the Act, put down the limit of appeals in civil cases to values not below 1,000 *pagodas* ; and subject further to security for costs and for performance of Judgment being furnished by the appellant. As regards criminal cases, the Supreme Court was given full and absolute power to allow or deny any appeal against its judgment.

Previous Charter by George II, relating to Mayor's Court repealed : and all records and muniments belonging to the Mayor's Court to be delivered to and preserved in the Supreme Court (sections 19 and 20).

Trials of criminal cases (offences and misdemeanours) by the Supreme Court to be by a Jury of British subjects resident in the town of Calcutta, and not otherwise (section 34).

Supreme Court to frame rules of practice, etc., and transmit copy to the Privy Council.

Miscellaneous—The Governor-General, the members of his Council, the Judges, persons holding civil or military offices under the Crown, prohibited to accept any present, donation or gratuity (sections 23 and 24) : loan not to be taken or interest at rate exceeding $12\frac{1}{2}$ per cent. per annum (sections 30 and 31).

The Governor-General, the members of his Council, the Chief Judge and other Judges to be Justices of the Peace (section 38).

Trial of any servant of the Company, when a subject of His Majesty, for breach of public trust or embezzlement of public money or stores, or for defrauding the Company, —to be held by the Supreme Court (section 33).

Charges against the Governor-General, President, Governors, or any members of their Council, or against the Chief Justice or any of the Judges of the Supreme Court,—of offences against this Act, or of any crime or misdemeanour “against any of His Majesty’s subjects or of any inhabitants of India within their respective jurisdictions”—to be tried in His Majesty’s Court of King’s Bench : details of procedure in such trial (sections 39 to 45). The Charter which followed the Act explained further that the Governor-General, members of his Council or of the Judges could not be arrested or tried except for cases of treason or felony.

Following these provisions in the Act, which were repeated almost *verbatim*, a Letters Patent or Charter from the Crown was issued on 26th March, 1774, establishing the Supreme Court of Judicature at Fort William. In amplification of the position of the Court, thus established, the Charter laid down that the Supreme Court was to be a Court of Record : to be Justices of the Peace and Coroners : and to have authority as the King’s Bench in England. It was also to be a Court of Equity as the Court of Chancery in Great Britain : and be the Court of Oyer and Terminer and Gaol Delivery. It was to exercise also Ecclesiastical and Admiralty jurisdiction : to grant probates and letters of administration, to sequester estates of deceased persons, to appoint guardians of infants and insane persons and so forth.

The Charter also provided for the appointment of a Sheriff by the Governor-General and Council, on nomination by the Supreme Court : and laid down rules relating to the Sheriff’s functions and duties.

The salary of the Chief Justice was fixed at £8,000 by the year, and each of the Puisne Judges £6,000.

13 Geo. III, Cap. 64 (1773)—provided for lending the company a sum of £1,400,000, by Exchequer

Bills. It also made various provisions for the appropriation of the revenues of India and the reduction of the liabilities of the Company (*viz.*, the Bond Debt) to £1,500,000. (This reduction was duly effected, *vide* references in 19 Geo. III, Cap. 61, 20 Geo. III, Cap. 56 and 21 Geo. III, Cap. 65. See also 34 Geo. III, Cap. 41.)

17 Geo. III, Cap. 8 (1777)—fixed dates for the next elections of Directors, *vide* 13 Geo. III, Cap. 63 on the subject.

19 Geo. III, Cap. 61 (1779)—The advance of £1,400,000 made by Exchequer Bills in 1773 (13 Geo. III, Cap. 64 *ante*) having been repaid, and the Bond Debt (borrowings) reduced to £1,500,000, the limitation on the rate of dividend was withdrawn: and the Company was permitted to retain possession of “all the territorial acquisitions and revenues lately obtained in the East Indies” for one year from 5th April, 1777. But it was added that nevertheless “the rights of the Crown or of the said Company” were not to be affected after the expiration of this Act, and “the same shall remain, continue and be in the same state and condition, in all respects, as though this Act had never been made” (section 6). For the next stage, see 20 Geo. III, Cap. 56 (1780) and 34 Geo. III, Cap. 41 (1794).

20 Geo. III, Cap. 56 (1780)—Same recitals as in 19 Geo. III, Cap. 61, but the one year was to be computed from 6th April 1780.

21 Geo. III, Cap. 65 (1781)—The objects of this Act, as stated in the Title, were—(1) securing payment to the British Exchequer by the Company of a sum of £400,000 in full discharge of all claims by the “public” up to 1st March, 1781: (2) also securing to the “public” a certain proportion of the revenues and profits of the Company during a further period: (3) granting the Company for this further term the sole and exclusive trade to and from

the East Indies. This term was for 10 years, but terminable on 3 years' notice after 1st March, 1791; and section 8 of the Act further provided that during this period "all the territorial acquisitions and revenues lately obtained in the East Indies shall remain in the possession of the United Company."

This Act further provided that the Company might raise recruits for the Company's military service, and to keep up to 2,000 such recruits in some part of His Majesty's dominions in Europe, liable to be called at any time as a soldier in the East Indies.

21 Geo. III, Cap. 70 (1781)—A supplement to the Regulating Act of 1773 (13 Geo. III, Cap. 63): referring to that Act, the Preamble recited—"Whereas many doubts and difficulties have arisen concerning the true intent and meaning of certain clauses and provisions in the said Act and the Letters Patent" issued thereunder, "and the minds of many inhabitants * * * have been disquieted with fears and apprehension;" and then provided—(1) that the Governor-General and Council were not to be subject to the Supreme Court (Preamble), but to a competent Court in England (section 4); (2) Supreme Court not to have jurisdiction in matters concerning the revenue or acts done in the collection of revenue according to the usage and the Regulations of the Governor-General in Council (section 8); (3) no person to be liable to the jurisdiction of the Supreme Court by reason of his being a landowner, landholder or farmer (section 9), or by the reason of his being employed by the Company or by a British subject (section 10)¹; (4) the jurisdiction of the Supreme Court, so far as regards natives of the country, was restricted to those who were inhabitants in the city of Calcutta

¹ These explanations of the jurisdiction of the Supreme Court, set at rest the ugly conflicts that had arisen between the Supreme Court and the executive Government: see Introduction, pages 24 to 28.

provided that in all matters relating to inheritance, succession, contract and dealing between party and party, the law and usage of Muhammadans or of the Gentoos were to be followed according as all parties or the defendants were Muhammadans or Gentoos (section 17).¹

Governor-General and Council authorised to constitute and frame Regulations² for the Provincial Courts and Councils (section 23), and to be deemed the Court of Appeal and of Record, over such Courts (section 21) : and the competent Court to determine on all offences committed in collecting the revenue (section 22).

Judicial officers of the country or magistrates not to be liable to actions for wrong, etc., to the Supreme Court for any judgment, decree or order (sections 24, 25) : and no magistrate to be liable in any such case to personal caption or arrest (section 26).

The Act also provided for compulsory registration of persons employed by Europeans.

23 Geo. III, Cap. 36 (1783)—sanctioned an increase of the Bond Debt by borrowing a further sum of £500,000 (section 2) : condoning the delay in the payment of certain sum to the British Exchequer previously stipulated (21 Geo. III, C. 65 *ante*) : fixed the half-yearly dividend to “proprietors,” at 4 per cent.

23 Geo. III, Cap. 83 (1783)—repeated the clause of the rate of dividend in 23 Geo. III, Cap. 36, and to enable the Company to pay this, granted relief by extending further the time for payment of the amount due to the “public” (the British Exchequer), and by advancing certain sums by “loans or Exchequer Bills” : contemplated reduction of Company's Bond Debt.

¹ Otherwise, the law administered by the Supreme Court was the Law of England.

² By section 43 of 3 & 4 Wm. IV, Cap. 85 (1833) *post*, the Governor-General in Council was empowered to make laws for all persons (Europeans or natives) and all Courts.

24 Geo. III, Cap. 25 (1784)—Commonly called Pitt's India Act, and sometimes as the Second Regulating Act : required submission of letters or orders relating to the administration of revenue or civil or military affairs, " to the Commissioners of the Treasury or to the High Treasurer or to one of His Majesty's principal Secretaries of State " (section 33) : authorised His Majesty the King to establish a Board of Commissioners, with powers of supervision and control over all the British possessions in the East Indies and the affairs of the United Company, in particular to superintend, direct and control all acts, operations and concerns which in any wise related to the civil or military governments or revenues of the said possessions : and the Court of Directors were to pay due obedience to and be governed and bound by the orders of the Board.

Laid down the principles of treatment of landholders in Bengal, Behar and Orissa on the basis of permanent rules regarding demands (section 39).¹

Laid down the procedure for prosecuting European British subjects in the Court of King's Bench in England, when such persons were guilty of extortion or other misdemeanour in the East Indies : limitation—three years from the return of the party to England or 3 years of the delivery of inventory : such proceedings, not to prejudice or affect the rights or claims of the public or the Company, respecting their territorial acquisitions and revenues.

24 Geo. III, Cap. 34 (1784)—provided for a reduction of the Bond Debt of the Company. But see 28 Geo. III, Cap. 29, *post*.

26 Geo. III, Cap. 16 (1786)—explained and amended certain provisions of 24 Geo. III, Cap. 25. Repealed and replaced by 33 Geo. III, Cap. 52 *post*.

¹ This led eventually to the Decennial Settlement with the Zemindars in 1789-90, declared permanent in 1793.

26 Geo. III, Cap. 57 (1786)—Constitution of the Special Court of Judicature for the trial of charges or information of extortion or other misdemeanour against British subjects in the service of the Company (see *24 Geo. III, Cap. 25 ante*), such Court consisting of selected members of the Houses of Parliament : details of procedure therefor. Laid down also (section 29) that such persons when resident in India were to be amenable to the Courts in India of Oyer and Terminer and Gaol Delivery and Courts of general and quarter sessions of the Peace, for offences of murder, felony, homicide, burglary, rape, perjury, riots, trespass, etc.¹.

26 Geo. III, Cap. 62 (1786)—provided for an addition of £800,000 to the capital stock of the Company, at the rate of £160 per cent.

28 Geo. III, Cap. 8 (1788)—All expenses for raising transporting and maintaining such forces as might be sent to India (or might be in India) to be borne out of the revenues of the territories and possessions in India : Board of Commissioners empowered to order and direct accordingly. (As for retiring pay and pensions, see *4 Geo. IV, Cap. 71 (1824)* which provided for payment by the Company of £60,000 annually.)

28 Geo. III, Cap. 29 (1788)—empowered the Company to increase the Bond Debt by £1,200,000.

29 Geo. III, Cap. 65 (1789)—empowered the Company to increase their capital stock by a further sum of £1,000,000 to be subscribed at £170 per cent.

31 Geo. III, Cap. 10 (1791)—removed certain doubts regarding the powers of the Board of Commissioners : and also permitted a limited addition to the forces of the Crown in India.

¹ The Mayor's Court was abolished and a Recorder's Court established under *37 Geo. III, Cap. 142 (1793)* : and the Recorder's Court was replaced by the Supreme Court under *39 and 40 Geo. III, Cap. 79 (1799)*, for which see *post*.

33 *Geo. III, Cap. 47 (1793)*—permitted a further addition of £1 million to the capital stock, to be subscribed at £200 per cent. : placed the stock (called “ The East India Annuities ”) under the management of the Bank of England.

III. Period from 1793 to 1812

33 *Geo. III, Cap. 52 (1793)*—extended the term of the Company possessing the British territories in India for 20 years (on agreement for payment by them of a certain annual sum to the British Exchequer), and the revenues and profits therefrom. [For further extension see 53 *Geo. III, Cap. 155 (1813).*]

Revised rules for the appointment of Board of Commissioners and their powers : Five Commissioners to be appointed by His Majesty from the Members of the Privy Council, of whom two to be principal Secretaries of State and one the Chancellor of the Exchequer : three Commissioners might form a Board for executing the several powers : Salaries of the members (not to exceed £5,000 annually) and staff and other expenses (not to exceed £11,000 annually), to be borne by the Company as part of their commercial charges : Board to superintend all concerns relating to the civil, military and revenue government in the East Indies : obligation of the Court of Directors to supply copies of papers and other information to the Board : power of the Board to alter the orders of the Directors : orders of the Directors when approved by the Board, not revocable by the “ proprietors ” (sections 2 to 13 and 23).

Board not to have power to nominate or appoint servants of the Company (section 14).

Provided for appointment of a Secret Committee by the Court consisting of three Directors, for deliberation

of matters which required secrecy, such as war, peace, etc. Board of Commissioners might obtain information through the Secret Committee, and the Secret Committee direct from India (sections 19 to 22).

Governor-Generals and Governors to be appointed by the Court of Directors : if they failed then by the King : Commander-in-Chief to be a member of the Governor-General's Council : and of the Councils of Madras and Bombay, if resident there (sections 25, 26, 32 and 33). His Majesty by sign manual might remove any officer or servant of the Company (section 35).

Governor-General at Fort William empowered to superintend the other Provinces : Governors of the other Provinces to obey (sections 40, 41). Governor-General not to declare war without the command of the Directors, except preparations of hostilities (sections 45, 46). Power to Governor-General to secure and detain persons suspected of illicit correspondence dangerous to the peace or safety of British possessions and settlements, and relation with princes, *rajās*, zemindars and others : like powers to the other Governors.

Covenanted civil servants to have precedence according to their appointments : all prohibited receiving of gifts, etc. (sections 56 to 63), except Counsellors at Law and Physicians and Surgeons who might receive professional fees (section 64).

Governors, members of the Council, Collectors, Judges—not to trade, except on account of the Company (sections 137 to 146) : but not to affect previous transactions (section 147).

The Company to enjoy all profits, etc., granted by any other Acts or Charters, freed from conditions of redemption etc. : yearly accounts to be laid before Parliament (sections 72 to 126) : and reciprocal discharge between the Crown and the Company (section 127).

Expenses of His Majesty's forces in India to be borne by the Company, and all sums issued previously by the Paymaster-General to be paid forthwith (section 128).

Governor-General given power to appoint Justices of the Peace by commissions issued under the seal of the Supreme Court of Judicature, attested in the name of the Chief Justice (section 151): such Justices not to sit in Courts of Oyer and Terminer unless called for: proceedings of the Justices of the Peace removable by *certiorari* into the Court of Oyer and Terminer (section 153): Justices might be called to sit in the Council for speedy disposal of appeals (section 155). Justices of the Peace responsible for sanitation, repairing of streets, watching, etc., at the Presidency towns: and for this purpose assemble at general and quarter sessions: for expenses, empowered to impose assessment on owners or occupiers of houses, buildings and grounds (section 158).

Appointment of Coroners at Presidency towns: such Coroners to be British subjects (section 157).

No spirituous liquors to be sold in the towns of Calcutta, Madras and Bombay without a licence from the Justices of the Peace (section 159).

Jurisdiction of the Supreme Court extended to offences committed on the high seas (section 156).

(The next general Act corresponding to this one was 3 and 4 Will. IV, Cap. 85, *post.*)

34 Geo. III, Cap. 41 (1794)—empowered the Company to continue their Bond Debt of £2 millions, and borrow a further sum of £1 million. (The effect of the various amendments up to this time respecting the Bond Debt was to enable the Company to borrow a total of £7 millions, on this species of security.)

37 Geo. III, Cap. 117 (1797)—Vessels of countries in amity with His Majesty to import into and export from the British possessions in India, such goods as

were permitted by the Company, not contrary to treaties or law : Regulations relating to such trade to be subject to the control of the Board of Commissioners : and the Court of Proprietors not to alter any resolution of the Directors relating to intercourse with such foreign nations.

37 Geo. III, Cap. 142 (1727)—Pension to Chief Justice and other Judges of the Supreme Court, payable out of India's revenue.

Regulations of the Governor-General in Council, to be printed with translation in the country languages : Provincial Courts to be bound by such Regulations : copies of Regulations to be transmitted to the Court of Directors and to the Board of Commissioners.

Provided for a Recorder's Court at Madras and Bombay : and for a Supreme Court at Madras to be established by King's Charter : Jurisdiction of such Courts in respect of His Majesty's subjects, similar to that of the Supreme Court at Fort William.

39 Geo. III, Cap. 109 (1799)—For better recruiting of forces of the East India Company, His Majesty might order officers to levy men to serve in the Company : or to cause transfer of recruits : pay, etc., of the men to be met from the Company's revenue : Royal commissions to officers in such employ : regimental court martial and discipline.

39 and 40 Geo. III, Cap. 79 (1808)—Court of Directors authorised to determine the boundaries of the several Presidencies.

Establishment of a Supreme Court at Madras with like number of Judges as for the Supreme Court at Fort William : and similar rules regarding jurisdiction, etc.

(This was followed by a Letters Patent or Charter from the Crown, dated the 26th December, 1800, on the same lines as the Charter for the Supreme Court at Calcutta.)

Jurisdiction of the Supreme Court at Fort William extended to Benares, in the same manner as in Bengal.

42 Geo. III, Cap. 85 (1802)—Detailed rules relating to prosecution for offences committed by persons employed in public service abroad, in the Court of the King's Bench in England.

44 Geo. III, Cap. 3 (1803)—Rate of interest on the Company's bonds restricted to the limit of the rate on Exchequer bills.

45 Geo. III, Cap. 36 (1805)—Court of Directors might appoint the Commander-in-Chief to be a member of the Council of Fort William. (Re-enacted in 3 and 4 Will. IV, 4 Cap. 85.)

47 Geo. III, Cap. 41 (1807)—The Company enabled to raise money upon Bonds, instead of increasing their Capital Stock : borrowing of a further sum of not exceeding £2 million, permitted, although they had not increased their Capital Stock as was authorised by 37 Geo. III, Cap. 31 (1797).

47 Geo. III, Cap. 68 (1807)—Governors and members of the Council at Madras and Bombay to be Justices of the Peace.

Referred to the College "lately established in England for the appropriate education of young men designed for the civil service in India" : time to be spent in the College not to exceed two years.

Authorised the Governments in India to establish public Banks in India : and all persons in the service of the Company might subscribe : but no Judge to be a director.

50 Geo. III, Cap. 87 (1810)—Further provisions for establishment of men in the Company's forces : first term to be for 12 years. (See 39 Geo. III, Cap. 3 and 27 Geo. III, Cap. 2 *ante*.)



51 Geo. III, Cap. 64 (1811)—enabled the Company to borrow a further sum of £2 million : but no further Bond after the total was £4 million : Bonds issued by the Company declared transferable.

51 Geo. III, Cap. 75 (1811)—Further provisions for payment by the Company of salaries and other charges of the Board of Commissioners in England.

Authorised the Company in cases of unforeseen emergency, to take up ships by private contract.

IV. Period from 1813 to 1833

53 Geo. III, Cap. 155 (1813)—continued the possession and government of the British territories in India¹ and the revenues therefrom, in the East India Company for a further term of 20 years (section 1). The Preamble, after reciting the previous Acts by which exclusive right of trade in the East Indies was granted to the East India Company, stated, "Whereas it is expedient that from and after the 10th April, 1814, the right of trading, trafficking and adventuring in, to and from, all ports and places within the said United Company's present Charter, save and except the dominions of the Emperor of China, should be thrown open to all His Majesty's subjects, in common with the said United Company"; and it was thus laid down in the first place that the Company's monopoly of trade to India was to cease, except that their exclusive trade with China and trade in tea, were continued² for the further period (section 2). Consequential provisions made for the trading by other English Companies (sections 6 to 20), and for relieving the East India Company

¹ Included also the "late" acquisitions on the continent of Asia or in any island north of the Equator.

² This also ceased when the term was next renewed in 1834, *vide* 3 and 4 Will. IV, Cap. 85, *post*.

of their obligations, as monopoly traders, in certain matters as supplying a certain quantity of saltpetre every year. It was then laid down that the same duties were to apply to the goods of the East India Company's trade as for the other English traders (section 24). The East India Company's Government in India would, however, fix the rates of export, import and transit duties, but subject to approbation of the Board of Commissioners to be communicated by a written despatch from the Court of Directors (section 25).

Consequent to above, more elaborate provisions were made regarding persons from Great Britain (or Europe) who would be proceeding to or staying in India : such persons required to have licence if residing beyond certain distances from the Presidency towns : summary punishment for infringing the " licence " rules (sections 33, 36, 101, 104 and 107).

Inter alia all such persons were to be subject to the Rules and Regulations of the East India Company's Government (section 35) : jurisdiction to try criminal offences by such persons (British subjects in India) continued in the King's Courts in India (*viz.*, the Supreme Courts at Calcutta and Madras, and the Coroner's Court at Bombay) : except that, to provide for more effectual redress for the " natives in cases of assault, forcible entry, or other injury accompanied with violence which may be committed by British subjects at a distance from places where His Majesty's Courts are established," Magistrates in the interior, as Justices of the Peace, empowered to try and punish such offenders up to a fine of Rs. 500 : such convictions to be removable *acertiorari* into the Court of Oyer and Terminer at the Presidency towns (section 105).

For civil claims by natives of the country against British subjects residing or trading or occupying immovable

property beyond ten miles from the Presidency towns of Calcutta, Madras and Bombay, the latter were amenable to the Company's courts in the interior : but if such British subject desired to sue a native similarly, he must first have registered himself in the prescribed manner in the Court of the district and obtained a certificate (section 107). Appeals in both classes of cases to lie either to the *Sadar Dewany Adalat* or to the Supreme Court.

To remove doubts about the jurisdiction of the Company's Courts over the natives who were in the service or employment of the Company or of any of His Majesty's subjects (*i.e.*, British subjects), it was explained that such Courts had full jurisdiction over such natives, as if the latter were not in such service or employ, provided that the jurisdiction of the Supreme Court (or the Court of Recorder at Bombay) which the Supreme Court "may now lawfully exercise," would not be ousted, but that it should be concurrent in such cases (section 109).

The Admiralty jurisdiction of the Supreme Courts (and the Court of Recorder at Bombay) extended to maritime crimes on the high seas (section 110).

Provisions in 33 Geo. III, Cap. 52 (*ante*), relating to the payment of a sum (it was up to £500,000 a year by 33 Geo. III, Cap. 52) in the British Exchequer or the Bank of England, were repealed (section 61) : the rate of dividend to the stock-holders at $10\frac{1}{2}$ per cent. per annum, was continued (section 62) : and a complete separation of the Company's accounts between "territory" and "commerce" was directed (sections 64 and 65).

The Company, however, was liable for payment for the King's troops from Great Britain for the East Indies, out of the revenues of India but such troops were not to exceed 20,000 men, unless greater number were sent on the Company's requisition (section 87).

510 ANALYTICAL SURVEY OF BENGAL REGULATIONS

To remove previous doubts, section 96 made it clear that the Governments in India had full power and authority to make laws and regulations, and articles of war, for the order and discipline of all officers and soldiers, and for courts martial.

Governor-General and Governors, in Council, empowered to impose duties of customs and other taxes on places and persons within the Presidency towns as outside (section 98) : and to make laws and regulations respecting such duties and taxes (section 99).

Colleges and Seminaries (for the training of civil and military officers), to be continued and to be subject to the control of the Board of Commissioners : all expenses being borne from the revenues of India (section 42).

Laid down certain rules regarding service required before higher offices could be held, *viz.*, 4 years for offices with £1,500 per annum : 7 years for offices with £3,000 per annum : 10 years for offices with higher pay (section 82) : provision also for passage expenses from the United Kingdom, superannuation, gratuities, etc., to be borne from the revenues of India, including those for the Board of Commissioners. Promotions to be according to seniority (sections 85, 86).

“Whereas no sufficient provision hath hitherto been made for the maintenance and support of a Church establishment in the British territories in the East Indies,” section 49 provided for a Bishopric for the entire territory, and one Archdeaconry for each of the Presidencies of Calcutta, Madras and Bombay : their salaries, etc., to be paid by the Company.

Section 43 provided that after defraying the expenses of the military, civil and commercial establishments and interest on the Company's debt,—“a sum of not less than Rs. one lakh in each year, shall be set apart and applied to the revival and improvement of literature and

encouragement of the learned natives of India, and for the introduction of sciences amongst the natives,"¹ to be regulated by the Governor-General and Council, subject to control by the Board of Commissioners.

54 Geo. III, Cap. 105 (1814)—validated the levying of duties of customs and other taxes previously imposed.

55 Geo. III, Cap. 64 (1815)—Gratuities exceeding £500 to require approval of the Board of Commissioners.

55 Geo. III, Cap. 84 (1815)—Governor-General in Council empowered to define or extend the limits of the Presidency town of Calcutta (and so the Governors of Madras and Bombay for Fort St. George and Bombay).

Certain powers given to the Supreme Court regarding Letters of Administration and Probates.

Governor-General and Council given authority to prevent subjects of foreign States from residing or sojourning within the British territories.

Pensions of Judges to be a charge on the revenues of India : scales of pension according to length of residence in India and of service.

55 Geo. III, Cap. 116 (1815)—Ships or vessels built in India, of less than 350 tons burthen, not to require any declaration or registration.

57 Geo. III, Cap. 57 (1817)—Persons enlisting militia men for the East India Company's service, subjected to certain penalties.

58 Geo. III, Cap. 83 (1818)—laid down certain regulations for hiring ships built for service of the Company, and for the Court of Directors engaging ships for a limited number of voyages.

¹ For a number of years, however, the amount was allowed to lapse, little or nothing being done for the purpose intended. It is to be noticed that the words used did not mean primary education or extension of literacy.

58 *Geo. III, Cap. 84 (1818)*—validating marriages solemnized in India before 31st December, 1818, by ministers of the Church of Scotland.

59 *Geo. III, Cap. 25 (1819)*—His Majesty authorised to fix the rate and distribution of freight money for the conveyance of species and jewels on His Majesty's ships and vessels.¹

59 *Geo. III, Cap. 54 (1819)*—In pursuance of the convention of commerce with the U.S.A., vessels of American-build allowed to clear out from British settlements in the East Indies, were subject to the same regulations as British-built ships.

1 *Geo. IV, Cap. 99 (1820)*—enabled the East India Company to raise and maintain a Corps of Volunteer Infantry, the expenses being borne out of the Company's commercial fund.

1 and 2 *Geo. IV, Cap. 61 (1821)*—Unclaimed shares of Prize money belonging to soldiers or seamen in the service of the Company, to be paid over to the "Lord Clive's Fund" for soldiers, or to the Hospital Fund (the Poplar Fund) for distressed seamen or their widows.

3 *Geo. IV, Cap. 93 (1822)*—provided for a settlement between His Majesty and the Company as regards the money advanced to the latter in 1812 and their other dues, on payment being made according to previous arrangements.

Public property in St. Helena to become the property of the Company.

4 *Geo. IV, Cap. 71 (1823)*—To provide for the retiring pay and pensions and other expenses of that nature, arising in respect of His Majesty's forces serving in India, the Company were to pay from the territorial revenues of India,

¹ Under an order of the Board of Admiralty in January, 1838, the freight was the same as for the transfer of treasure belonging to the British Government.



a further annual sum of £60,000. Revised rates of pension for the Bishop and the Archdeacons¹ and Chaplains.

Established Supreme Court of Judicature at Bombay.² (The Charter of 8th January, 1753, establishing a Court at Bombay was altered by virtue of 37 Geo. III, Cap. 142.) The Supreme Court at Bombay to have powers similar to those of the Supreme Court at Fort William. (The Act was implemented by a Letters Patent or Charter from the Crown, dated the 8th December, 1823, which corresponded entirely to the Charter of 26th December, 1800, establishing the Supreme Court at Madras.)

4 Geo. IV, Cap. 80 (1823)—This Act³ consolidated (with some amendments) the laws in force then with respect to trade from and to places within the limits of the Charter of the East India Company; and made the following provisions regarding Indian *Lascars* :—

Lascars and natives of India not to be British mariners (within the meaning of 34 Geo. III, Cap. 68) : proportion of British seamen instead of three-fourths, to be four British seamen for every hundred tons of the vessel : Governor-General of Fort William authorised to make rules and regulations in respect of masters, officers and owners of ships and vessels trading under the authority of this Act and provide penalty for breach of regulations relative to *Lascars*, etc. : Company to supply all necessaries for distressed *Lascars* brought to Great Britain : but might recover expense from the owners.

4 Geo. IV, Cap. 81 (1823)—consolidated and amended the laws for punishing mutiny and desertion of officers and soldiers in the service of the Company : and authorised

¹ For the Bishop—£1,500 per annum : for the Archdeacon—£800. For further revisions, see 3 & 4 Will. IV, Cap. 85, section 96.

² Up to this time Bombay had only a Recorder's Court : this Court merged into the Supreme Court by this Act.

³ The Act in its main part was repealed by 3 & 4 Will. IV, Cap. 93 (1833) consequent to the change in the position of the Company then.

soldiers and sailors in the East Indies to send and receive letters at a reduced rate of postage.¹ The Act was called the East India Mutiny Act.

4 *Geo. IV, Cap. 83 (1823)*—Trade and shipping having been thrown open, this Act² made certain provisions for better protection of the property and consignments of goods by merchants, entrusted to their Factors and Agents : declared that persons in whose names goods were shipped were to be deemed to be true owners thereof : consequential provisions regarding Bills of Lading, assignments, etc.

5 *Geo. IV, Cap. 108 (1824)*—The following newly acquired possessions (from the King of the Netherlands, under Treaty, dated 17th March, 1824), were transferred to the East India Company, *viz.*, the island of Singapore, with all the establishments of the Netherlands on the continent of India, and the town and fort of Malacca and its dependencies. (The factory of Bencolen and the English possessions in Sumatra were ceded to His Majesty the King of Netherlands, by the same Treaty.)

6 *Geo. IV, Cap. 61 (1825)*—Certain provisions relating to mutiny and desertion of officers and soldiers in the service of the Company : and for disposal of their properties.

6 *Geo. IV, Cap. 85 (1825)*—referred to 53 *Geo. III, Cap. 155 (1813)*, by which a Bishopric was established for the East Indies on a salary of £5,000 per annum to be paid from the revenues of India : the same continued at an exchange value of two shillings for Bengal current rupee.

Salary of the Chief Justice of the Supreme Court of Judicature at Madras and Bombay, fixed at Rs. 60,000 per annum : and the Puisne Judges at Rs. 50,000. Pension after 5 years' residence.

¹ The subsequent Acts were 7 Will. IV, Cap. 32 (1834), 1 Viet., Cap. 32 (1837) and 4 Viet., Cap. 96 (1840) as regards postage : and 3 & 4 Viet., Cap. 37 (1836) as regards the rest.

² Amended by 6 *Geo. IV, Cap. 94, post.*

Certain rules relating to administration of Singapore, Malacca and Prince of Wales Island.

6 Geo. IV, Cap. 90 (1825)—provided for pension for President, Vice-President and Chief Secretary of the Board of Trade : and for certain other offices specified.

6 Geo. IV, Cap. 94 (1825)—replaced 4th Geo. IV, Cap. 83, with amplification, providing for better protection of the property of merchants in relation to goods, etc., entrusted to Factors or Agents, and shipped.

6 Geo. IV, Cap. 133 (1825)—Surgeons and Assistant Surgeons or Apothecaries in the service of the Company entitled to practise in England and Wales without further examination or certificate (as for similar persons in the Army and Navy).

7 Geo. IV, Cap. 37 (1826)—"All good and sufficient persons resident within the limits of the several towns of Calcutta, Madras and Bombay, not being the subjects of any foreign State, according to such rules and subject to such qualifications as shall be fixed"—eligible to serve as jurors in the Supreme Courts of Judicature.

Juries for the trial of Christians to consist wholly of persons professing that religion.¹

7 Geo. IV, Cap. 52 (1826)—Charges and expenses of naval forces² sent or to be sent out on representation of the Directors, to be borne by the Company as part of their political charges.

9 Geo. IV, Cap. 33 (1828)—Properties left by British subjects and others (not being Muhammadans or Gentoos) situate within the jurisdiction of the Supreme Courts, to be deemed as assets in the hands of executors and administrators, liable to the payment of the debts of their deceased owners.

¹ Repealed by 2 & 3 Will. 4, Cap. 117 (1832).

² The provisions in the previous Acts (see 53 Geo. III, Cap. 155 *ante*), related to land forces and naval stores.

9 *Geo. IV, Cap. 50 (1828)*—Certain rules regarding application (and accounts) of Prize-money acquired by soldiers or seamen in the service of the Company : the same being handed over to the Company to be applied for the purposes of the Funds called “ Lord Clive’s Fund ” and the “ Poplar Hospital Fund.”

9 *Geo. IV, Cap. 72 (1828)*—extended the provisions of the East India Mutiny Act (4 *Geo. IV, Cap. 81*) to the Bombay Marine.¹

9 *Geo. IV, Cap. 73 (1828)*—The Supreme Courts of Judicature to be “ Courts for the Relief of Insolvent Debtors,” in the towns of Calcutta, Madras and Bombay. Certain detailed rules of procedure.

9 *Geo. IV, Cap. 74 (1828)*—“ Whereas many wholesome alterations have lately been made in the criminal law of England and the administration thereof, by authority of Parliament,” it was considered expedient that some of the said alterations should be extended to the British territories under the Government of the Company in India, in respect of all persons over whom “ the criminal jurisdiction of any of His Majesty’s Courts of Justice * * * does or shall hereafter extend.” (This meant the Supreme Court at Calcutta.)

Classification of bailable and non-bailable charges : recording of evidence : Coroner : Accessories : Plea of not guilty or refusal to plead to put the prisoner on his trial by Jury.

Description of various kinds of offences and their punishments : when fine, how the Supreme Courts of Judicature to dispose of the money.

(The provisions of the Act applied to the Supreme Courts of Judicature at Calcutta, Madras and Bombay

¹ Later, the Indian Navy was subjected to the provisions in 3 & 4 *Vict., Cap 37 (1840)*.



cities.¹ For places outside these cities, the rules in the Company's Regulations applied.)

10 Geo. IV, Cap. 16 (1829)—suspended the operation of 7 Geo. IV, Cap. 56 (1827), (so far as regards period of residence at Hertford College) regarding appointment of writers (civil service) : time not exceeding 2 years spent at Hertford (Haileybury) College after 17 years of age, to be counted as so much time spent in India.

10 Geo. IV, Cap. 62 (1829)—Persons accepting offices in the East Indies ineligible to be members of the House of Commons.

11 Geo. IV and 1 Will. IV, Cap. 75 (1830)—authorised the Company to pay out of the territorial revenues, the persons aggrieved by the failure of the Registrar (Gilbert Ricketts) of the Supreme Court of Judicature at Madras to deposit their moneys in the Treasury, the Registrar having been found insolvent later.

2 and 3 Will. IV, Cap. 117 (1832)—authorised Governors in Council to appoint as Justices of the Peace in the towns of Calcutta, Madras and Bombay, such residents (not being subjects of any foreign State) whom they considered fit and qualified. The Preamble recited that it was considered “expedient that other persons besides the covenanted civil servants of the United Company

* * * or other British inhabitants of the East Indies, should be capable of being appointed to the office of the Justice of the Peace ” in the above towns.

¹ The laws of England, unless excluded or modified (as for the personal laws of the natives, *vide* 21 G. III, C. 70, *ante*), applied to the proceedings of the Supreme Courts. Some of these laws of this period are mentioned below :—

Insolvent Debtors (9 G. IV, C. 73) : Conveyances and Transfers of Estates and Funds vested in Trustees (11 G. IV & 1 W. IV, C. 20) : Infants, Femes, Covert, Idiots, Lunatics, etc. (11 G. IV & 1 W. IV, C. 65) : Forgery (11 G. IV, C. 66 and 2 & 3 W. IV, C. 113) : Interrogatories (1 W. IV, C. 22) : Insolvents (2 W. IV, C. 43) : Vice-Admiralty (2 W. IV, C. 51) : Army Prize money (2 W. IV, C. 53) : Insane persons (2 & 3 W. IV, C. 107).

3 and 4 Will. IV, Cap. 41 (1833)—referred to the previous practice of appeals being heard by a Committee of the whole of His Majesty's Privy Council who then reported to His Majesty in Council for the final judgment : the Committee styled henceforth "The Judicial Committee of the Privy Council" : no matter to be heard unless in the presence of four members of the Committee : detailed rules of procedure, and of costs. (For next Act, see 3 & 4 Will. IV, Cap. 82 and 1 & 2 Vict., Cap. 77).

3 and 4 Will. IV, Cap. 52 and 56 (1833)—Both these Acts, passed on the same day, viz., 28th August, 1833, laid down regulations regarding customs duties for goods imported into the United Kingdom. The former required among other matters that—(1) sugar to be imported must be certificated as products of British possessions : (2) importation of certain goods were prohibited absolutely or conditionally : (3) goods of places within the limits of the East India Company's Charters, to be brought only to such ports as were approved by the Lords of the Treasury.

The other Act laid down a consolidated tariff for inward duties for importation into the United Kingdom. The tariff contained, among others, the following, which affected Indian products :—

Copper products from India—1s. per cwt. : cotton wool or waste of cotton wool—4d. per cwt. : manufactures of cotton—10 per cent. *ad valorem* : articles of manufactures of cotton, wholly or in part made up—20 per cent. *ad valorem*.

Goat's wool or hair—4d. per cwt. : manufactures of hair or goat's wool, wholly or in part made up—30 per cent. *ad valorem*. Woollens (other than goat's)—15 and 20 per cent. *ad valorem*.

Raw silk—1d. per lb. : Thrown silk of various kinds—1s. 6d. to 5s. 2d. per lb. : Manufactures of silk, pure or mixed—20 per cent. *ad valorem*.

Sugar :—Molasses—9*s.* per cwt. ; Refined sugar—£8 8*s.* per cwt. ; Brown candy—£5 12*s.* per cwt. ; White sugar—£8 8*s.* per cwt. (Three years later the duty on sugar was reduced to £1 12*s.* per cwt., and for the manufacture of places where importation was restricted, as Bengal, to £1 4*s.* per cwt. *Vide* 6 and 7 Will. IV, Cap. 26, section 1.)

Saltpetre—6*d.* per cwt. : Teak wood—1*d.* per 50 cubic feet.

3 and 4 Will. IV, Caps. 54, 55 and 59 (1833)—These three Acts passed also on the same day, *viz.*, 28th August, 1833, had for their object “encouragement of British shipping and navigation,” and provided for registration of ships which would be permitted to import goods and merchandise into the United Kingdom or into the British possessions, from Asia, Africa or America : and laid down detailed rules.

3 and 4 Will. IV, Cap. 73 (1833)—This was an Act for the abolition of slavery throughout the British Colonies : for promoting the industry of the manumitted slaves : and for compensating the persons hitherto entitled to the services of such slaves. The provisions of the Act did not, however, extend to the territories of the East India Company, or to the islands of Ceylon and St. Helena.

Changes in 1833

3 and 4 Will. IV, Cap. 85 (28th August, 1833)—continued the territorial possessions of the Company in the East (excepting St. Helena) for a further term of 20 years, but with material change in their position (Preamble).

The British territories to remain under the government of the Company till 30th April, 1854, but as “in trust for the Crown of the United Kingdom of Great Britain and Ireland” : all real and personal property

of the Company to be held only as in such "trust for the Crown, for the service of the said Government (*i.e.*, of the territories in India) and other purposes in this Act mentioned" (Preamble and section 2).

The exclusive right of trading with China, and of trading in tea to cease (from 22nd April, 1834) (section 3).

Company to close their commercial business and sell their merchandise, stores and effects at home and abroad, and all their commercial assets, save as such as were retained for the purposes of the Government of the said territories: such sale to be under the superintendence of the Board of Commissioners (sections 4 to 8).

All the Bond Debts of the Company in Great Britain, and all their territorial and other debts and liabilities, to remain a charge upon the revenues of India, including a dividend of $10\frac{1}{2}$ per cent. per annum on the Company's Capital Stock to be paid half-yearly¹: Dividend to be subject to redemption by Parliament on payment of £200 for £100 stock, after April, 1874, or after any earlier period if Company deprived of the Government of India (sections 9 to 13).

The Company to pay (by instalments from time to time) a total sum of £2 million for the reduction of the National Debt, the same being kept in the Bank of England under a separate account to be called—"The Account of the Security Fund of the India Company," with additions of interest and dividends (when in securities) on it, until the whole amounted to £12 million: thereafter all dividends on the capital stock of the Security Fund, "until the said Fund shall be applied to the redemption of the Company's dividend, and also all the said Security Fund, or so much thereof as may remain after the said

¹ This stock originally was £2 million. Additions made thereafter were—£1,200,000, in 1798, £800,000 in 1786, £1 million in 1789, and another £1 million in 1793, total thus in 1833 was £6 million.

dividend shall be wholly redeemed after the rate aforesaid, shall be applied in aid of the revenues of the said territories " (sections 14 to 17).

His Majesty to appoint " Commissioners for the Affairs of India," two or more of them forming a Board, one of them, the first named, being the President ; and the Board to have Secretaries and staff. The expenses of the Board to be borne by the Company from the revenues of India. Certain rules for the superintendence and control by the Board over the proceedings, etc., of the Court of Directors ; but the Board not to interfere with the appointment of officers of the Company (sections 18 to 34).

Provision for appointment of Secret Committee by the Court of Directors for particular purpose (*e.g.*, when Indian or other States were concerned, or secrecy was required) (section 35).

Salaries, etc., of the Directors to be borne by the Company from its revenues (section 37).

Presidency of Fort William in Bengal to be divided into two Presidencies, *viz.*, (1) Bengal and (2) Agra (section 38).

The superintendence, direction and control of the whole civil and military government and revenues in India, vested in a Governor-General and Counsellors to be styled " The Governor-General of India in Council " (section 39).

The Governor-General to have a Council with four Counsellors, three of whom to be chosen from the servants of the Company (not a military officer in command), and the fourth from outside the Company's servants (section 40).

The Governor-General in Council empowered to legislate for India in all matters excepting such as would amend or suspend any Act of the Parliament, or affect any prerogative of the Crown or the Parliament, or the

sovereignty or dominion of the Crown over any part of the territories ; or affect the constitution or rights of the Company (section 43).

Laws adopted by the Governor-General in Council, to be repealed, if later disallowed by the Court of Directors (section 44). All laws passed, unless repealed, to have " the same force and effect within and throughout the said territories, as an Act of Parliament " (section 45).

Governor-General in Council not to pass law which would affect the Courts of Justice established by Royal Charter (the Supreme Courts of Judicature) ; or which would impose a penalty of death on His Majesty's natural-born subjects born in Europe or the children of such subjects (sections 43 and 46).

Power reserved with the Governor-General himself to reject or suspend wholly or in part, any measure, proposed or passed by the Council affecting the safety or peace of India (section 49).

Reservation of the right of the Parliament to legislate for India. All laws passed by the Governor-General in Council to be laid before both the Houses of Parliament (section 51).

Provided for the appointment of a Law Commission to enquire into the jurisdiction, etc., of existing Courts of Justice and Police establishment and the operation of the laws (sections 53 to 55).

The executive government of the Presidencies (Bengal, Madras, Bombay and Agra) to be administered by a Governor and three Councillors in each (section 56).

Governors of Provinces not to make laws (except in case of urgent necessity) ; nor to grant money or create new offices, without the previous sanction of the Governor-General in Council. The Governors of Presidencies might propose laws to the Governor-General in Council (sections 65-66).

Governor-General in Council might appoint Deputy Governors for Bengal (section 69).

Articles of war to be made by the Governor-General in Council (section 73).

The following salaries (per annum) were fixed :—

Governor-General of India .. Rs. 2,40,000

Each ordinary member of the Council
of India 96,000

Each of the Governors of the Presi-
dencies 1,20,000

Each member of the Governor's Council .. 60,000

Passage money also to be paid : for Governor-General—
£5,000 ; for each of his members—£1,200 ; for each Governor
—£2,500 (sections 76 to 79).

The Court of Directors, with the approbation of the Board of Commissioners, to make regulations for the division and distribution of the patronage and the power of nomination of and to the various offices, commands and employments (section 78).

Authority given to His Majesty's subjects to reside in British India without licence, but subject to intimation on arrival, of their destination and objects of pursuit in India (sections 81 to 86).

No native of India nor any natural-born subject of His Majesty resident therein, to be by reason of his religion, place of birth, descent, colour or any of them, be disabled from holding any place, office or employment under the Company (section 87).

Governor-General in Council to take steps forthwith for mitigating the state of slavery, and for abolishing slavery as soon as practicable (section 88).

Certain provisions regarding the Diocese of Calcutta, and Bishoprics of Madras and Bombay, and their salaries, passage money, etc. The Bishop of Calcutta to be Metropolitan in India (sections 89 to 102).

Provision for the training of prospective civil servants in India (ages 17 to 20) in the Hertford College : estimates of vacancies to be furnished by the Governor-General. Management of the College, examinations and determining seniority and choice of Presidencies, etc., to be under the control of the Board of Commissioners (sections 103 to 108).

All powers of the Court of Directors to be subject to the control of the Board of Commissioners, except patronage and right of appointing to office, vested in or reserved to the Court (sections 109-10).

The Company to be called the "East India Company," and the term to be held to apply to the United Company of Merchants of England trading to the East Indies (section 111).

St. Helena vested in the Crown (section 112).

King's Courts (*i.e.*, the Supreme Courts at the Presidency towns) authorised to admit advocates and attorneys without the Company's licence (section 115).

The Court of Directors to submit accounts annually to the Parliament (section 116).

Act to commence from 22nd April, 1834 (section 117).

3 and 4 Will. IV, Cap. 93 (1833)—The East India Company's exclusive right of trading with China, and in tea, having ceased, this Act provided that all British subjects might carry on trade beyond the Cape of Good Hope to the Straits of Magellan (section 2) : list of men on Board any ship to be supplied on arrival in India (sections 3-4). Three Superintendents of the China Trade to be appointed by His Majesty, for the purpose of protecting and promoting trade with that country, and with orders and commissions to have a Force (sections 5-6) : a tonnage duty to be imposed for defraying the expense of establishments in China (section 8).

3 and 4 Will. IV, Cap. 101 (1833)—The exclusive right of the East India Company for trading in tea, having ceased, the management was transferred to the Commissioners of Customs : Tea, only from the Cape of Good Hope and places eastward of the same to the Straits of Magellan and from the United Kingdom, declared importable into the islands of Guernsey, Jersey, Alderney or Sark, or into the British possessions of America (section 2) : and the importation to be under the management of the said Commissioners of Customs.

GENERAL INDEX

A

- Abkari* 43, 386-403 ; Mughal period 389 ; resumption of 389, 396 ; farming of 391 ; revenue 393-96 ; policy 394-96 ; Regulations relating to 396-403. See "Distillery," "Tari," "Pachwai," "Bhang," "Ganja."
- Abul Fazl—See *Ayecn-i-Abkari*.
- Absconders 114, 149.
- Abwabs* 14, 20, 276.
- Acoobut* 108.
- Acts of Parliament relating to the Company's affairs 488-525.
- Adam, John—Civil Justice 125-28.
- Additional Judges 133.
- Adhela* (coin) 421.
- Administrators 515
- Admiralty (jurisdiction) 482.
- Adultery 116, 117, 119, 120.
- Affrays 124, 125, 128, 129.
- Agra (Presidency) 521.
- "Akbar the Great," by Smith 89.
- Ali Verdi Khan, land assessment 14.
- Allahabad 14, 201.
- Altamash (coins) 422.
- Ameens*, of Police 140, 150, 151.
- , Civil 179-80.
- Amherst, Lord—Criminal Justice 125-28 ; Police 156-57 ; Civil Justice 264-67 ; Customs 348-51 ; Salt 368 ; Opium 385 ; *Abkari* 403 ; Stamps 417-18.
- Appeals to Privy Council 4, 171, 178, 189, 204, 262, 269 ; to *Sadar Dewany Adalat* 163, 177, 178, 190, 192, 223, 235, 236, 237, 251, 252, 257, 272-73 ; to Provincial Councils 162, 178 ; to Provincial Courts of Appeal 177, 180, 193, 218, 220-22, 232, 233, 235, 236, 238, 257, 270, 274 ; to Zilla and City Judges 180, 197, 234, 235, 236, 237, 238, 240, 256, 271, 273 ; to Registrars 194 ; to Supreme Court 216 ; to Commissioner of Chinsurah 252 ; to Superintendent of Chandernagore 252 ; to *Sadar* Special Commissioner 262.
- Appeals—Special and Summary 190-91, 257, 261, 273.
- Apothecary 515.
- Arbitrators 227, 253.
- Archdeaconry 482, 510, 513.
- Arcot* Rupees 423.
- Armed guards 452, 465.
- Army 487, 497, 501, 504, 505, 506, 509, 511, 512.

Arrest and imprisonment (for revenue-arrears) 280.

Arson 118.

Arthashastra—Trade and Customs 302-04 ; liquor shops 386-87 ; coins 419-20.

Ascoli, F. D.—*cited*—380.

Assault 116, 117, 129.

Assistant Judges 194, 256.

Assistant Magistrates 75, 106, 115, 123.

Attorneys 524.

Auction Settlement of land 14, 20, 138, 277 ; its effect on Police 137, 139.

Aumils 25, 162, 164.

Ayecn-i-Abkari—Criminal Justice 54-57 ; Police 134-35 ; Land revenue 276 ; Trade and Customs 303 ; *Abkari* 388 ; Coins 420-22.

B

Bailable (and non-bailable) offences 113, 516.

Bail (for complainant) 113.

Baillie's "Digest of Muhammadan Law" *referred to*—162.

Banerjea, Dr. P. N., "Indian Finance," *referred to*—12, 44, 277, 357, 358, 377, 484, 487.

Banks, Bankers 432-34.

Barielly 128.

Barlow, Sir George—Criminal Justice 112 ; Civil Justice 247-50 ; Salt 365 ; *Abkari* 401 ; Stamps 415 ; Coins 438-39.

Batta (in coins) 437.

Begaris—See "Forced labour."

Behlooly (Coin) 421.

Benares, College 32, 185 ; Criminal Justice 102 ; Police 148, 149 ; Provincial Court of Appeal 244 ; Civil Justice 250, 264.

Bengal's surplus 12, 44, 53, 146, 472.

Bencolen 492, 514.

Bentinck, Lord William—Criminal Justice 78, 128-33 ; Police 157 ; Civil Justice 268-74 ; Customs 314, 351-52 ; Salt 368 ; Stamps 418 ; Coins 442-43 ; Jails 458 ; Commercial Residents 461-62 ; Indigo 463 ; Native soldiers 463 ; Prince of Wales Island, etc. 466.

Bernier—*cited*—303, 431.

Beveridge, "Comprehensive History"—*referred to*—50.

Bhagalpur, hill tribes of 128, 267.



528 ANALYTICAL SURVEY OF BENGAL REGULATIONS

- Bhang*, as an excisable article 392, 393, 397, 398.
Birbhum 112, 247.
Bishopric 482, 510, 513, 514, 523.
Board of Commissioners (in England) 23, 52, 476, 478, 480, 482, 483, 500, 501, 505, 506, 508, 520, 521, 523, 524; (in C. & C. Provinces) 259.
Board of Control 23, 52. See "Board of Commissioners."
Board of Revenue 33, 296.
Board of Trade 33, 515.
Bogri 118, 119.
Bombay, island of and Mayor's Court 3; deficits in 12; Supreme Court 513.
Bond Debts 484, 486, 491, 496, 497, 499, 500, 501, 502, 504, 506, 507, 520.
Branding (as punishment) 90, 106, 113, 133.
Breach of the peace 126, 127.
British Exchequer, payments to 2, 13, 49, 472-73, 483, 491, 497, 509; advances from 497, 499, 502, 512.
British subjects, meaning of 175.
Burdwan, cession of 2, 8, 10, 59; settlement of 14, 276; divided 234; Rancee of 27; Criminal Justice 59; Police 136-37.
Burglary 120.
Burke, Edmund—*cited*—473.
Burning of houses 114.
Buxar, battle of 2, 10.
Buxton, Prison Management 90.
- C**
- Calcutta*—purchase of 1; administration of 2-6, 60-62; re-entry into 7; boundary of 352, 511.
Calcutta Customs 6, 306, 313, 321, 327, 330.
Calumny (defamation) 116, 117.
Canals—See "Tolls."
Capital Stock 51, 484, 485, 501, 502, 520.
Carey, Rev., and Serampore College 32.
Cawnpur 201.
Ceded and Conquered Provinces 108, 110, 111, 145, 201, 244, 261, 263, 276, 337, 341, 414, 427.
Chakran land (police) 146.
Chandragupta 420.
Charter (of 1600) 468, 470; *Charter Acts* (of 1698) 488-89; (of 1726) 3, 6, 8; (of 1753) 4, 6, 8, 49; (of 1781) 49; (of 1793) 49; (of 1813) 51, 507; (of 1833) 42, 51, 52, 519-24; (of 1853) 52, 476.
Chowkidars—in villages 139, 143, 154; in towns 144, 145; tax for 144, 147.
Chinsurah 112, 122, 244, 251, 252, 266.
Chittagong, cession of 2, 8, 10, 59; Criminal Justice 60.
China trade 51, 371, 376, 507, 520, 524.
Civil Courts—jurisdiction, general 161, 194, 218; jurisdiction in revenue matters 200-03; in rent cases 204; no jurisdiction in amount of assessment 202; procedure for 219. See "Dewany Adalat," "Munsifs" and "Sadar Ameens."
Civil Justice, administration of—not undertaken for some years 10-13, 158-60; Warren Hastings's Scheme 160-72; Lord Cornwallis's Scheme 172-87; subsequent developments 187-99; general 199-218; Regulations relating to 218-74.
Clarke, Sir Ahud—*Civil Justice* 238.
Clavering (and Hastings) 29.
Cleveland, A., and Sonthals 103.
Clive 9, 20, 354-5.
Codification of Regulations 30, 454, 467.
Coins 18; pre-British period 419-23; during the Company's period 423-429; Rupees of kinds 424-26; copper coins 426-27; gold coins 428-29; exchange values 429-30; circulation and drainage of specie 430-32; Regulations relating to 435-43. See also "Mints."
Colebrooke, Supplement 17, 162.
Collectors 25, 161; action against for official acts 200-01; functions in rent-suits 206-07; commission (fee) for collecting Inland Duties 330, 331.
Commander-in-chief 503, 506.
Commercial Residents and Agents 20, 33, 36, 38, 214, 229-30, 323, 351, 449, 459.
Commissions for charges against officers 83, 254.
Commissioners of Divisions 35, 298; as Circuit Judges 35, 36, 77-8, 129, 130, 132, 298.
Committee of Secrecy (1772) 6, 16, 351.
Commutation of punishment 128.
Contempt of Court 128, 220, 266.
Cornwallis, Lord 2, 32-34, 50; Criminal Justice 69, 72, 96-101, 111-12; Police 138-39, 147-48; Civil Justice 172-87, 218-32, 246-47; Land Settlement 278-93; Customs 310-11, 321-25; Salt 360-61; Opium 373-75, 379-80; *Abkari* 389, 391-94, 396-98; Coins 423, 428, 435-36, 438; Registration 444, 454; Court of Wards 455; Commercial Residents 459; Covenanted Civil Servants 452, 467; Invalided Soldiers 463; Codification of Regulations 467.
Coroners 504, 516.
Corporal punishment 59, 133. See also "Whipping," "Branding."
Cossijura case of 27.
Cossim Ali—See *Mir Cossim*.
Cossimbazar 307.
Council Board 67.
Courts Martial 111, 114, 123.
Counterfeiting Coin 120.



Court of Circuit (Criminal) 33, 71, 97-100, 102; Single Judge might form 75, 102; application of Muhammadan law 83; two or more offences 126; Perjury cases 127; Reference to *Nizamat Adalat* for final judgment and sentence in certain cases 36, 98-100, 114, 119-21, 123, 126, 131, 133; movements of the Court 105; Benares 102; Cuttack 110. See also "Commissioners as Circuit Judges" and "*Nizamat Adalat*."

Court of Directors, constitution of 23, 469, 492.

Court of Proprietors 23.

Court of Wards 245-46, 455-57.

Covenanted Civil Service 41, 176, 452, 467, 476, 503, 510.

Cowell, History and Constitution, etc., 4, 6.

Cowries (as money) 426, 427, 428, 438.

Cox's Bazar 345.

Cozahks 115.

Criminal Justice, administration of—Mughal period 54-60; by the Company in Calcutta 60-62; not undertaken outside Calcutta for some time 10-13, 62-63, 472; Warren Hastings's scheme 64-69; Lord Cornwallis's scheme 69-73; exclusion of natives 73-74; Lord Wellesley's reforms 75-76; Collectors as Magistrates 76; Commissioners as Circuit Judges 77-79; changes in the constitution of the *Sadar Nizamat Adalat* 79-80; European British subjects as officers 80-83; modification of Muhammadan criminal law 83-91; certain social evils penalised 91-94; Treason 95-6; Regulations relating to 96-133.

Criminal law of England as extended to Presidency towns 516.

Crown—taking over of Government by 49, 52.

Customs, meaning of 304.

Customs duties—pre-British period 302-07; Company's period 43, 302-21; in trade with foreign countries 316-17; Regulations relating to 321-52; validation by Parliamentary enactment 318, 511; for imports into Great Britain 518-19. See also "Inland Duties," "Calcutta Customs" and "Manjee Customs."

Cuttack 110, 260.

D

Dacca and Jalalpur 274.

Dacoits 121, 125.

Dam (coin) 421, 422, 426, 427.

Damree (coin) 421, 426, 427.

Dare, R. M., note by, in Opium Commission Report 370.

Dare, R. M. (on Opium) 370.

Darogas (Police), jurisdiction 115, 139, 144, 147.

Daroga Adalat 64.

Decennial Settlement 278.

Declaratory Act (of 1781) 170.

Defamation—See "Calumny."

Deficits of Madras and Bombay 12, 278.

Deputy Collectors 42, 299.

Deputy Governor (for Bengal) 523.

Deputy Magistrates 73.

Derogh-go—See "Branding."

Deserters 513, 514.

Deut (price of blood) 66, 87, 105, 120.

Dewany 1, 10, 19, 23, 60, 62, 137, 159, 275, 308, 354, 470-71.

Dewany Adalat—See "*Sadar Dewany Adalat*," "*Muffassil Dewany Adalat*," "*Provincial Courts*" and "*Zilla and City Judges*."

Dharna 39, 91-93, 102, 103, 106, 123.

Dhimmi 162.

Dhonies (boats), duties on 316, 330.

Dies (for stamps) 409.

Dinars (coins) 421.

Diocese (of Calcutta) 523.

Directors of the Company—See "Court of Directors."

Dirhems (coin) 421.

Distilleries 390, 391, 399, 400, 402.

District Road Fund 316.

Disqualified proprietors 445.

Distrain by landlords 101, 292.

Dividend on Stock 13, 51, 497, 499, 509, 520.

Diwans 25; of the Mughal time 159.

Dowdeswell, G., his report on Police 141-43.

Dowgate Association 468.

Duff, Alexander 32.

E

East India Annuities 502.

East Indian Army 487-88.

East India Company named 524.

Education 32; fund for 51, 482, 510.

Ellenborough (Lord)—quoted—52.

Elliot, H. "*History of India*" 89.

Emigrants 447, 457.

Enticing away women 122.

Europeans—licence for 481, 508; trial of 508. See "European British Subjects."

European British subjects and jurisdiction of Courts 25, 29, 34, 67, 68-69, 80-83, 113, 175, 213-18, 237, 266, 481, 500, 522, 523.

European officers, when charged with offences 82, 112, 117, 127, 175, 249, 250, 500, 501, 506.

Europeans, employees of 499, 509.

European establishment 484-85.

Evidence Law 212.

Excise—See "Abkari."

Executors 515.

F

- False evidence 120.
Famine (of 1769-70) 15, 63, 277, 473.
Fatawa-i-Alamgiri—cited—162.
Faujdari Adalat 22, 64, 65.
Faujdari Bazi-jama 65.
Faujdar—of the Mughal time 13;
Hastings's scheme of 66.
Feal Suneah—See "Sexual Offence."
Ferries, tolls on 336.
Field, Mr. Justice—cited—5, 389, 471.
Fifth Report (1812) 61, 139, 335, 354,
356, 377.
Firminger, Ven. W. K.—referred to—11,
59, 61, 141.
Flogging 36, 61, 89, 111.
Forced labour 123.
Foreigner 481.
Foreign shipping 504.
Foreign trade 316-18, 342-44, 347, 349.
Forgery 120.
Fort. St. George and Mayor's Court 3.
Fort William—construction of 1, 4;
College at 199.
Forty-fifth Sun Coin 425.
Francis, Phillip (and Hastings) 165.
Free trade, privileges of, from Furrok
Sher 1.
Furrok Sher 1, 46, 354, 424, 472.
Futua (opinion) of *Kazis* and Law
Officers 85, 86, 87, 88, 114, 115, 119,
124.

G

- Ganja* (as excisable) 392, 397, 398.
Gaol deliveries 3, 105, 106, 110.
General Society 468, 470, 488.
Ghatwals 153.
Ghulam Hussain Khan—See "Seir
Mutaquerin."
Godena—See "Branding."
Godolphin, Lord, his award 469.
Goendas (spies) 141, 143.
Gohur Shahai (coin) 425, 441.
Government Pleaders 136, 175, 259.
Governor and his Council 16.
Governor-General at Fort William 23.
Governor-General of India 52, 521, 523.
Govindapur 1, 2.
Governors of Presidencies 522, 523.
Great Rent Case 292.
Grenville, Earl—quoted—50.
Gunje duties 331.
Guruckpur 111, 201.

H

- Haftam* Regulations 34, 196, 242, 293.
Haileybury (College) 199, 453, 506, 517,
524.

Hakimi 32.

Half-anna Coin 442.

Harington's Analysis 17.

Hastings, Lord—Criminal Justice
117-25; Police 152-56; Civil Justice
253-63; Customs 243-48; Salt
366-67; Foreigners 458; Jails 458;
Hidden Treasures 458; Printing
Press 459.

Herschel, Lord (minting of coins) 423.

Hidden Treasure 448, 458.

Hijli and Tamruk 60.

Holt Mackenzie, on Inland Duty 319.

Homicide 86-88, 105, 108, 120, 125, 129.

Hukoomati Adul 125.

House-breaking 116, 118, 122.

Huds (punishment) 84, 87, 108, 109.

Hundis (bills of exchange) 432.

Hunter, Sir William—referred to—15.

I

Idiots 240.

Imperial Gazetteer—referred to—357,
422, 430.

Impey, Sir Elijah 61, 169.

Ina—See "Sexual Offences."

Indigo 36, 264, 312, 344, 451, 462.

Infant sacrifice 39, 91, 93.

Inheritance 239.

Inland duty 6, 43, 45, 46, 312-15, 319,
326, 331-33, 339-41, 348.

Insolvent Debtors 516.

Investments (from revenues) 481.

Institution fees 43, 48, 144, 149, 183,
195, 234-35, 239, 254, 404, 407, 414-16.

Interest, on land revenue 289.

Interest, rate of 213, 226, 236.

J

Jack, J. C.—cited—72.

Jaigir to Clive 8, 20.

Jails 447, 458.

Jal-saz—See "Branding."

Jilaleh (coin) 421.

Judicial Committee formed 518.

Judge-Magistrate 32, 35, 70, 71, 116,
173-4.

Judge-Magistrate-Collector 167, 172-3.

Jungle mahals 112, 274.

Jury 4, 515.

Justices of the Peace 3, 34, 76, 81, 104,
113, 504, 506, 517.

K

Kabiraji 32.

Kautilya—See "Arthashastra."

Kayali dastur (weighman's fee) 328.



Kazis 21, 40, 41, 55, 57, 64, 65, 67, 83, 84, 85, 98, 99, 101, 133, 186; and preparation of deeds 411, 457.
Kazi-ul-Kazaat (Chief Kazi) 65.
Khalsa 11.
Khandaits 145.
Kipling, Rudyard—*quoted*—1.
Kissa 87, 99, 105, 107, 108.
Kists (for land revenue) 286.
Koorah (for burning) 102-03.
Kotwals 134, 144, 147, 153; his municipal duties 135.
Kumaon 119.
Kutl (homicide) of various kinds 105, 108; *Kutl-khota* 87.

L

Lakheraj 201, 228, 230, 294.
Lal Jelaly (coin) 422.
Land Acquisition 446, 447.
Land revenue—Mughal period 276; ceded districts 276; auction settlement 277; new policy under Pitt's India Act 278; Permanent Settlement 278-79; stringent rules for realisation by imprisonment, sequestration, sale of other properties 278-83; till the estates attained market-value 283-84; sale laws regarding 284-93; on resumption of *lakheraj*, etc. 294; temporary settlements 295; administrative functionaries 296-300; Register of estates 300-01.
Language (Court) 182.
Lascars (Indian seamen) 513.
Latest date of payment for land revenue 286.
Law officers 32, 40, 41, 85, 99, 105, 114, 115, 186, 198, 225, 247, 259, 267, 269.
Law Commission 522.
League of Nations (on Opium) 379.
Legal Remembrancer 259, 270.
Le Maistre (Judge) 26.
Limitation, Law of 184, 211, 244-46.
Liquor—use of in pre-British period 386-88; kinds of, in early days 389; duty on 401-3.
Lis pendens 184.
London East India Company 468, 469.
Long, Rev., Selections (Re : Crimes) 61.
Lord Clive's Fund 512, 516.
Lyall, Sir J. B. (on Opium) 370.
Lunatics 240.

M

Macaulay—*referred*—6, 15, 32, 310.
Macedon (coins) 417.
Madras 3. See "Fort St. George," "Mayor's Court," "Supreme Court."
Magistrates, powers of 121, 122, 126, 129, 130; Head of Police 145.

Magistrate-Collector 35-36, 76, 124, 127, 130.
Malacca 352, 452, 466, 514, 515.
Madrassa (Calcutta) 32, 185.
Mahabharata 302.
Maharatta, Ditch 1, 3; raids of 3, 5, 59.
Maintenance of peace, security for 127.
Majority, age of 211, 229.
Mal Adalat 164, 165, 207, 218.
Manjee Customs 310-11, 324, 328, 332.
Manouchi—*cited*—303, 388.
Manu, his code—*referred to*—386; on weights 419.
Maulvis, to expound law 64.
Mayor's Court 3, 4, 5, 39, 61.
McNeile, I. J., Report on Police 136, 139.
Md. Reza Khan 14.
Medical College (Calcutta) 32.
Medical practitioners 515.
Meer Mahal 134.
Meer Munher (Opium Contractor) 372.
Mesne process, writ of 183.
Metropolitan in India 523.
Middleton, Bishop, College in honour of 32.
Midnapore 8, 10, 59, 60, 276.
Military Courts 269.
Military Officer (native) 259.
Mill, James—*cited*—9, 13, 17, 18, 40.
Minors 240.
Minto, Lord (First) Criminal Justice 112-17; Police 150-52; Civil Justice 250-53; Customs 337-43; Salt 365-66; Opium 385; *Abkari* 401-02; Stamps 415; Coins 439-40; Emigrants 457; Native soldiers 465; Troops 465.
Mints—Mughal period 422; Company's period 423-29, 437, 439-43.
Mir Cossim (Cossim Ali)—his grants 2; his agreement 7, 8; his assessment 14, 20, 277; transit duty 46.
Mir-i-Adl 56, 57.
Mir Jafar—*Jaigir* to Clive 8; his agreement 8, 63.
Monckton Jones, on Hastings 372.
Monopoly of trade 49-51, 468, 476, 481, 497, 507.
Mohurs (coin) 422, 429-30, 435-36, 441.
Muffassil Dewany Adalat 21, 161.
Muftis 21, 22, 40, 41, 64, 67, 84, 85, 98, 99, 133, 186.
Muhammadan Criminal Law 39, 65, 83-91.
Muhammad Tughlak, his coins 422.
Muktab 32.
Muktearnamas 416, 417.
Mullangees 352, 356, 360.
Munsifs—in Sher Shah's scheme 166; as native commissioners 37, 38, 42, 166, 180, 193, 194, 196, 197, 253, 260, 262, 263, 270, 271, 418; salaried service 42, 196, 271; from zemindars 72, 194-95, 231, 242.
Munsif-i-Munsifan 56.
Murder 116, 124, 131.

532 ANALYTICAL SURVEY OF BENGAL REGULATIONS

Murshid Kuli Khan 3, 20.
Murshidabad and Mughal tribunals 5.
Murshidabad Court (work in 1793-1801) 75.
Mutilation of limbs, as punishment 39, 54, 66, 89.
Mutiny (of 1857) 476.
Mutiny Act 513, 514, 516.

N

Nabobs, nickname 13.
Nadia rivers 45.
Naibs (civil) 162.
Nand Kumar 14, 61.
Napolean Bonaparte, his designs regarding India 95.
Native Commissioners 37, 179-80, 184, 230-31, 234, 248.
Native Princes, suits by or against 235.
Natives, services for 40, 41, 42, 52, 72-74.
Native subjects of the British Government 117.
Naval forces, charges for 515.
Nepal 119.
Netherlands treaty with 514.
Newspapers 448.
Nineteenth Sun Coin 424-25.
Nizam—of the Nawab 19, 21-22, 63, 64, 65, 69, 70, 474.
Nizam *Adalat*—of the Subahdars 19; as in Warren Hastings's time 21-22, 25, 64, 67; as constituted by Lord Cornwallis 34, 69-70, 96-100; changes by Lord Wellesley 70, 79-80, 107, 111; and subsequent 35, 113, 130, 132; law applied in 83; superintendence by reservation of power for final sentence in specified cases 36, 98-100, 114, 119-21, 123, 126, 131, 133; to refer to Governor-General in Council for pardon or mitigation of sentence 104-05; power to mitigate sentence or pardon an accomplice for securing evidence 115.

O

Opium—monopoly 12, 20, 33, 46, 370-72; contracts 22, 230, 373-375, 379; advances 380, 382; agency 375-77, 381, 383, 384; revenue 43, 371, 377; early history 369-71; Contract System 372-75, 379; Agent System 375, 381; licensed vendors 376; policy 377-79; illicit 381, 383-84; informers 383-84; marketable 385; duties on 385; consumption 378; "provision" opium 379; League of Nations on 379; importation from outside 382, 384; Regulations relating to 379-85.
Outcasting 59.

P

Pachwai (excisable) 392, 402.
Panchayet—for criminal cases 85, 132; *Chowkidari* 145, 153.
Pancham Regulation 38, 293.
Pandits consulted 21, 40, 41.
Paper currency 434.
Pardon of offenders 104, 106, 115, 126, 156.
Pathsalas 32.
Patni tenures, sales of 39, 205-06, 261.
Paupers 232, 252, 258, 264.
Penalty for revenue arrears 289.
Pension 505, 512, 513, 514.
Perjury, commitment for 107, 120, 241.
Permanent Settlement 275, 278.
Personal laws of Hindus and Muhammadans 21, 39, 162, 169, 171, 176, 210-11, 219-20.
Petition fees 405.
Pice 427, 441.
Pie 442.
Pitt's India Act 278, 479, 500.
Plassey, battle of 1, 7, 9, 10.
Pleaders (*Vakeels*) 184-86, 198, 223, 258, 267, 276.
Police 3, 13; pre-British 134-37; Warren Hastings 22, 138; Cornwallis 138-39, 147-48; *Ameens* of Police 140, 150; Dowdeswell on 141-43; village watch 143-44, 153-54; in towns 144, 152-53; and Magistrates 33, 36, 145; taxation for 43, 48, 144, 146, 148, 149, 151; *Chakran* land 135, 138, 146; Superintendent 36, 142, 146; and ferries 154; and vagrants 156; Code 154-56; resistance of 149; Regulations relating to 147-57.
Pools, S. (on coins) 421.
Poplar Hospital Fund 512, 516.
Powlah (coin) 421.
Pratt, Judge of Murshidabad—quoted—87.
Presidency General Hospital 32.
Primary education 45.
Primogeniture 211, 225.
Prince of Wales Island 352, 452, 466, 515.
Principal *Sadar Ameens* 197, 271, 444.
Printing Presses 448, 459.
Privy Council 171, 178, 189, 517. See also "Appeals."
Prize money 512, 516.
Processes 105, 107, 220, 240, 248.
Provincial Councils 25, 27; judicial functions 162-63; validated 29, 170, 475, 498; abolished 163.
Provincial Courts of Appeal—established 33, 177, 220-22; had also original jurisdiction 177, 193; also Court of Circuit for Criminal Cases 71, 97-98, 102, 118; qualification for Judges 189, 257; two Judges to sit 232; single Judge 250; Dacca Court split up 241; abolished 35, 165, 193, 274. See also "Appeals," "Court of Circuit."



Provincial Courts of Circuit 33, 71, 75, 83, 97, 102.
Pykes—Zemindari 3, 135, 139, 149-50.
Pysah (coin) 421. See "Pice."

R

Radhacharan Mitra (trial of) 61.
Raiyats, rights of 208-09, 289-90.
 Rajkumars (of Benares) 92.
 Ramgarh 274.
 Rape 116, 117, 119, 120.
 Recorder's Court (Madras) 505.
 Registrars of Courts 101, 104, 193, 226, 233, 234, 236, 242, 258, 263, 264.
 Registration of deeds 444, 454.
 Regulating Act (of 1773) 2, 16, 23-24, 30, 67, 167, 475, 493-96; supplementary (of 1781) 29, 30, 170, 498.
 Rent—suits 200-04, 233, 236, 239-40, 260, 265, 271-72; reference to Collector 38, 206; direct to Collector 206-07. See "Mal Adalat."
Res judicata 184.
 Resumption of invalid *Lakheraj* 268; jurisdiction of civil courts in 201-03; Special Commissioners 203-04.
 Revenue administration 22, 33, 296-301.
 Revenue-sales 209, 231-32, 279-90.
 Revenue-suits 200-04.
 Review of judgment 184, 191, 238, 253, 265.
 Revision of orders 184, 192, 238.
 Ricketts, Gilbert, case of 517.
 Robbery 120, 126, 128, 132, 237.
 Roberts, P. E., "History of British India" 28.
Rowanas (passes) for goods 312, 313, 314-15, 328, 332, 333, 338; stamp duties on 413, 414, 415.
 Rudra Narayan (Cooch Behar) 63.
Rupaiya, Rupeeah 420-21.
 Rupee 423-26, 431, 435, 437-40, 442.

S

Sacrifice of infants 39, 93, 108.
Sadar Ameens 42, 193, 196, 197, 216.
Sadar Dewany Adalat—Warren Hastings's 16, 21, 24-5; Lord Cornwallis's 34, 101, 173, 179, 187; Law administered by 171; Original jurisdiction 189-90; Appellate jurisdiction—from Provincial Councils 162-63; from Superintendent-Judges 163; from Provincial Courts of Appeal 176-78, 190-92; special and summary appeals 190-91; Review, Revision 191-92; Appeals to Privy Council 189; Constitution 35, 178, 188-89, 222, 238; Governor-General ceases to be Chief Judge 169-70; resumes as Chief Judge 169, 179; ceases finally 188, 240; Member of

his Council not to be Judge 188; other references 222, 237, 240, 241, 247, 250, 253, 255-57, 271-72.
Sadar Nizamat Adalat—See "Nizamat Adalat."
Sadar Distillery 390.
Salgram stones 326.
Salishan (Arbitrators)—See "Native Commissioners."
 Salt (manufacture and duty)—Mughal period 353-54; Clive's plan of "exclusive society" 354-55; Warren Hastings's scheme of farming 355-56; Salt Agents and improvements 356-57; later policy 357-58; monopoly right discussed 358-59; Regulations relating to 360-68; general 20, 22, 27, 33, 43, 47, 149, 341, 346.
Sanyasi and Fakir raiders 63, 140.
 Sarup Chand, case of 26.
Sati 39, 91, 94, 131.
Sayer 3, 305, 307, 322, 326.
Seasut 108.
 Secret Committee 503, 521.
 Security—for good behaviour 88, 121, 122; for preventing breach of peace 127; from plaintiff 183, 241, 243.
 Security Fund 51, 520.
Seir Mutaquerin 12, 15, 55, 57, 420.
 Select Committee (1772) 351; (1781) 28; (1783) 12, 358, 377; (1812) 61, 139, 141, 354, 355, 377; (1822) 300; (1832) 377.
Sepah-Sillar (Commander of the Army) 54.
 Serampore 32, 44, 114, 118, 258.
 Sessions Judge 78.
 Sexual offences 89, 119.
 Shah Alam 2, 424.
Shah Bandars (Royal Ports) 305.
 Shahabaz Beg, case of 28.
 Shamasastri—See "Arthasastra."
 Sher Shah (*Munsifs*) 166; coins 420, 422.
 Ships, Indian built 511; engagement of 511; protection of 514.
 Shore, Sir John—on the Great Famine 15; on the circulation of specie 431-32; as Governor-General—Criminal Justice 102-06; Police 148-49; Civil Justice 232-38; Customs 326-28; Salt 361-62; Opium 381; *Abkari* 398; Stamps 411-13; Coins 436-37; Court of Wards 456; Indigo 462; Native soldiers 464.
Sicca Rupee—See "Rupee."
 Silk industry 47; duties on 348.
 Singapore 452, 466, 514.
 Sitaram Ray 57.
 Slavery 66, 116, 132, 519, 523.
 Smith, "Akbar the Great"—quoted—89.
 Somerset, Negro slave 66.
 Sonthals 103.
Soobah (suspicion), cases of 88, 108.
 Sovereignty, how passed 1, 9, 18, 19, 70, 471-74.

534 ANALYTICAL SURVEY OF BENGAL REGULATIONS

Special Commissioners 119, 203, 261, 267, 268, 270.
 Specie, circulation of 430-32; freights for 512.
 State offences 95, 96, 120.
 Stephen, Sir Fitzames—*quoted*—73.
 St. Helena 512, 524.
 Stamp duty—on private documents 43; origin of the system in Europe 405; its introduction in 1797 in India 405; rates of 406; imposition in Calcutta 407; on *Abkari* licence 391, 398, 405; on transit *Rowanas* 405; for judicial petitions, etc. 406; for plaints in Court 407; stamp office 407; stamp vendors 415, 417; dies for stamps 408-10; revenue from 409-11; Regulations relating to 411-18.
 Statutory Civil Service 52.
 Stolen property, receivers of 116.
 Strachey, Judge—*quoted*—75.
 Strachey, Sir John—*cited*—369.
 Succession 239. See "Personal Law."
 Sumatra 514, 515.
 Sundarbans 201, 295.
 Superintendent, as Civil Judge 163, 164.
 Superintendent of Police 36, 140, 151, 152, 156, 157.
 Supervisors 17, 161.
 Supreme Court of Judicature 2, 24-9, 67-69, 80, 83, 104, 113, 167-72, 199, 482, 493, 498, 505, 506, 516, 517, 522; Bombay and Madras 505, 513, 514.
 Surgeons 515.
 Surplus (of revenue) 12, 40, 44, 53, 146, 472.
 Sutanati 1, 2.

T

Talookdars, rights of 204.
 Tamluk 60.
 Tanka (coin) 420, 422.
 Tari (excisable) 392, 397, 399, 401, 402.
 Tea, trade in 507, 520, 524, 525.
 Thanadars 3, 135, 137-39.
 Theft 118.
 Thomas, E., "Chronicles of the Pathan Kings"—*referred to*—420.
 Tolls on rivers, etc. 45, 316, 326.
 Touchet's Committee 28.
 Town *Chaukidars* 152, 153.
 Town duty—See "Inland duty."
 Transit duty—See "Inland duty."
 Translation (of records) 107, 238.
 Transportation 106, 118.
 Treason 95, 96, 107, 111.
 Trespass 117.
 Trisuli (coins) 423, 425, 441.
 Trevelyan, Sir Charles, on Inland duty 46, 319.
 Troops 452, 465.
 Tusher—See "Branding."
 Twenty-four Parganas 8, 248, 255, 732.

U

Under-trial prisoners 121.
 United Company, named 470, 490.
 United States, trade of 512.
 Usufructuary mortgage 213.

V

Vacations 238.
 Vagrants 156.
Vakalatnamas 416, 417.
Vakeels—See "Pleaders."
 Vansittart 354.
 Vorelst, on Auction Settlement 12, 14, 60.
 Vincent Smith—*cited*—302.
 Village Communities 159.

W

Wahed Hosain—Mughal Period, Justice 55, 56, 307.
 War, stores for 491; declaration of 503.
 Warren Hastings 2, 12, 16, 18-23; Criminal Justice 64-69; Police 138; Civil Justice 160-171; Land Revenue 277; Customs 309; Salt 255; Opium 371-72.
 Weaving 38, 47.
 Wellesley, Lord—Criminal Justice 70, 75, 106-11; Police 149-50; Civil Justice 238-46; Customs 329-36; Salt 362-65; Opium 381-82; *Abkari* 398-401; Stamps 413-14; Coins 437-38; Registration 455; Court of Wards 456; Commercial Residents 461; Native soldiers 464; Covenanted Civil Service 467.
 Weights 426, 443.
 Westland, James, on Jessore 282.
 Whipping 61, 90, 120, 127.
 Wilberforce, William—Education grant 32.
 Witnesses—religion of 100; list of 100; examination of 108; cost of 117.

Z

Zemindars—and Police 13, 59, 136-39, 149; judicial functions 13, 58, 59, 62, 63, 76, 161, 165-66, 181-82, 193, 195, 204-06, 227; reporting of crimes 115; rights of 208; settlement with 277-78, 294; powers of distraint 101, 292; confinement for arrears 280; provision for troops 452, 465.
 Zilla and City Judges 33, 35, 36, 174-78, 193, 256; also Magistrates 84, 96; also Justices of the Peace 113; as Sessions Judges 194.
 Zina—See "Sexual Offences."

ERRATA

- Page 24, line 5 from bottom, *for* "directly" *read* "directly or indirectly."
- .. 79, foot-note, last line, *for* "City Judge" *read* "Chief Judge."
- .. 86, para 29, line 6, *for* "or blood" *read* "of blood."
- .. 133, line 14, *for* "Judges" *read* "Courts."
- .. 226, line 8 from bottom, *for* "12½" *read* "12."
- .. 233, line 15, *for* "Council" *read* "Court."
- .. 353, foot-note, line 1, *for* "1 per cent." *read* "5 per cent."